K#: 9166

HIGHWAY, HEAVY & RAILROAD CONSTRUCTION AGREEMENT

between

HIGHWAY, HEAVY, AND UTILITY DIVISION – ICA, INC.

and

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION 181

April 1, 2009 to March 31, 2012

INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 181
700 N. Elm Street
Henderson, KY 42420

DISTRICT OFFICES

District One
P.O. Box 34
Henderson, KY 42419
Phone (270) 826-2704

District Two
6500 Interchange Rd., N
Evansville, IN 47715
Phone (812) 474-1811

District Three
2902 Crittenden Drive
Louisville, KY 40209
Phone (502) 636-1476

District Four
121 Cherrybark
Lexington, KY 40503
Phone (859) 278-8458

District Five
924 Clark Street
P.O. Box 1034
Paducah, KY 42001
Phone (270) 443-7766

District Six
2151 Greenup Avenue
Ashland, KY 41101
Phone (606) 325-8963

HIGHWAY, HEAVY, AND UTILITY DIVISION – ICA, INC.
One North Capitol Avenue, Suite 1000
Indianapolis, IN 46204-2026
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AGREEMENT BY AND BETWEEN
HIGHWAY, HEAVY, AND UTILITY DIVISION – ICA, INC.
and
INTERNATIONAL UNION OF OPERATING ENGINEERS
LOCAL 181

THIS AGREEMENT is made and entered into by and between the Highway, Heavy, and Utility Division – ICA, Inc., acting as negotiating agent on behalf of members of the Division who signed this Agreement or facsimile thereof, party of the first part, known hereinafter as "EMPLOYER," and the Operating Engineers Local Union 181, party of the second part, known hereinafter as the "OPERATING ENGINEERS LOCAL" or "UNION."

It is agreed and understood that said negotiating agent, "EMPLOYER," shall in no event be bound as principal or be held liable as negotiating agent or as principal in any manner for any breach of this contract by any of the parties hereto.

It is further agreed that the liability of the Employers who accept, adopt, and sign this Agreement, or facsimile thereof, shall be several, and not joint, and that the liability of the Operating Engineers Local, herein named, shall be joint.

1. BARGAINING AGENT. The Employer and Employers recognize the Union as the sole and exclusive bargaining agent of its Operating Engineers on all work covered by this Agreement.

The Union recognizes the Highway, Heavy, and Utility Division – ICA, Inc., as the sole and exclusive bargaining agent for members of the Division who sign this Agreement, or a facsimile thereof, on all work covered by this Agreement.

2. NON-DISCRIMINATION. The Employer will not discriminate in hiring or during employment because of race, religion, color, sex, national origin, ancestry, age, handicap, veteran's status or a qualified individual with a disability.

The Union will not discriminate in any respect including membership, training opportunities, or referrals because of race, religion, color, sex, national origin, ancestry, age, handicap, veteran's status or a qualified individual with a disability.

It is also agreed that both the Union and the Employer will fully comply with all federal and state requirements as they pertain to equality and opportunity for employment in the construction industry. In addition to equal employment opportunities, the Employer and Union fully support affirmative action in construction.

3. EMPLOYEES COVERED. This Agreement shall have effect on and cover employees performing work in the area covered by Article 4 of this Agreement for the Employer and all job site equipment repairs and maintenance and all other job site work which has been or may be awarded to the International Union of Operating Engineers and, without limiting the foregoing, all classifications of employees listed in Schedule "A" and any addition or additions thereto during the life of this Agreement. Provided, however, that this Agreement does not cover warranty and specialized mechanics who are not employees of the Employer. Such mechanics may perform job site repair or job site maintenance if assisted by an employee covered by this Agreement.

This Agreement shall not cover or apply to Superintendents, Assistant Superintendents, General Foreman, Foreman, Timekeepers, Messenger Boys, Guards, Confidential Employees, and Office Help.

The Foreman and all above are Agents of the Employer and in no way shall be construed to be an Agent of the Union.

No Foreman or Supervisor shall be allowed to operate, repair or maintain any mechanical equipment when such operation takes the job of an employee covered by this Agreement.

4. AREA COVERED. This Agreement shall cover and apply to the territorial jurisdiction of Local 181. The territorial jurisdiction of Local 181 in Indiana shall be the following counties:

Bartholomew	Floyd	Lawrence	Ripley
Brown	Franklin	Martin	Scott
Clark	Gibson	Ohio	Spencer
Crawford	Harrison	Orange	Switzerland
Dearborn	Jackson	Perry	Vanderburgh
Decatur	Jefferson	Pike	Warrick
Dubois	Jennings	Posey	Washington

5. WORK COVERAGE. This Agreement shall cover the type of work as outlined in Articles 6, 7, and 9 and all job site equipment repairs and maintenance, and other job site work, which has been or may be awarded, to the International Union of Operating Engineers; provided, however, that this Agreement does not cover job site repair or maintenance performed by warranty and specialized mechanics who are not employees of the Employer.

For purposes of this paragraph, "job site equipment repairs and maintenance" shall include equipment repairs and maintenance performed at a location established for the sole purpose of repairing and maintaining equipment for a specific job in question.

For purposes of this paragraph, "other job site work" shall include work performed at a location within reasonable proximity to the job in question and for the sole purpose of performing part of that job.

6. HIGHWAY CONSTRUCTION shall include construction, modifications, snow removal, additions or repairs of roads and streets and construction incidental thereto, including necessary demolition and site clearing; alleys, guard rails, fences, parkways, parking areas, airports, bridle and bicycle paths, athletic areas, highway bridges, grade separations involving highways, sewers, water lines and underground utilities incidental to street and highway improvements.

Airports as used herein shall mean airports and flight strips, grading, drainage, and paving, exclusive of building construction.

EXCLUSIONS. It is understood that the work coverage in this Article 6, except as relates to airports, shall not be construed to apply in or on government defense projects, nor shall it be construed to apply to industrial or commercial projects, except as relates to airports and/or housing projects.

7. HEAVY CONSTRUCTION AND RAILROAD CONTRACTING shall include the construction, or modification, or addition, or repair of railroad construction projects, railroad spurs, railroad bridges, train wrecks, grade separation involving a railroad, pile driving, piers, abutments, retaining walls, viaducts, pedestrian tunnels, subways, track elevation (excluding new elevated railroads), elevated highways, drainage projects, irrigation projects, flood control projects, reclamation projects, reservoirs, dams, exclusive of dams and work incidental thereto on the Ohio River let by the Corps of Engineers, dikes, levees, revetments, channels, channel cut-offs, dredging projects and jetties; including the operation, maintenance, and repair of all land and floating plant, equipment, vehicles, and other facilities used in connection with and serving the aforementioned work and services, not including any such work let as a building contract.

EXCLUSIONS. It is understood that the work coverage in this Article 7 shall not be construed to apply in or on government defense projects and/or industrial or commercial projects.

8. DEFINITIONS. An industrial project shall mean all work done on the premises of the owner building such industrial plant.

A commercial project shall mean all work done on the premises of the owner building such commercial establishment. Educational facilities shall be included in commercial classifications.

9. LOCAL PRODUCTION OF MATERIALS, whether such materials are produced by the contractor himself, for his own use, or for him by contract with another, is construed to be the production of materials with plants established, or reopened or to be established, in the vicinity of the work for the sole purpose of supplying materials to be incorporated into the work on a designated project or projects.

For the purpose of this paragraph Local Production of Materials shall include such concrete plants, asphalt plants, gravel and stone crushing plants, sand producing plants, and sub-base material operations.

10. ARBITRATION. It is specifically agreed by and between the parties hereto that there will be no lockouts, strikes, or stoppages of work of any sort as a result of any dispute involving matters which are the proper subject for arbitration hereunder.

All differences of opinion, disputes, and grievances, except those covered by Articles 11 and 12, are subject to this Article 10 and shall be handled and processed as follows: subject to the exclusions last above set out, there shall be no stoppage of work on account of any difference of opinion or dispute which may arise between the Employer and the Union and/or between an Employer and the Union. With respect to such exclusion, if there is a stoppage of work, it shall not be a violation of this Agreement and the employees stopping work shall not cease to be employees, but shall be entitled to no compensation so long as such work stoppage shall continue.

If a difference of opinion or dispute arises between the parties, such difference of opinion or dispute shall be referred to and considered by representatives of the Employer and the Local Union within twenty-four (24) hours, Saturdays, Sundays, and holidays excluded. If this procedure fails of a satisfactory and prompt adjustment of the difference of opinion or dispute, it shall be immediately referred to a Board consisting of two (2) members, one to be appointed by the Employer and one by the Operating Engineers Local involved. If within forty-eight (48) hours, Saturdays, Sundays, and holidays excluded, after such difference of opinion or dispute is so referred to the Board, as so constituted, and they are unable to reach a decision, the Board shall appoint a third member. If the Board, as so constituted, is unable to agree upon a third member within a reasonable time not to exceed seventy-two (72) hours or at a later date by mutual agreement, after such difference of opinion or dispute is submitted, either the Union or the Employer, or both, shall request the Director of the Federal Mediation and Conciliation Service to appoint an impartial third (3^{rd}) member. The parties shall jointly request of the third (3^{rd}) member when he is appointed that the matter be expedited as rapidly as possible for hearing. The decision of the Board shall be in writing signed by a majority of the Board and delivered to the Employer and the Union and shall be final and binding upon all parties concerned in the dispute. The aforesaid Board shall be permanent, but its individual members may be changed at any time by their respective organizations. The members of the Board may receive such pay for their services as their respective organizations see fit to allow. Nothing herein contained shall prevent an employee from presenting his individual grievance as provided for and guaranteed by the Labor Management Relations Act of 1947.

There shall be no stoppage of work on account of any difference of opinion or dispute which may arise between this and any other unit or units of organized labor, or between units of organized labor, or between any unit or units of organized labor and any other division of the Highway Industry.

11. PENALTY-WAGES. If any Employer fails to pay wages, the arbitration procedure herein provided for shall become inoperative and the Union shall be entitled to resort to all legal and economic remedies including the right to strike and picket until such failure to pay has been corrected.

12. PENALTY-PENSION, HEALTH & WELFARE, TRAINING FUND. If any Employer, after forty-eight (48) hours written notice of default, fails to pay Pension, Health and Welfare or Apprenticeship & Training contributions, the arbitration procedure herein provided for shall become inoperative and the Union shall have the right to resort to all legal and economic remedies including the right to strike and picket until such failure to pay has been corrected.

Article 11 and 12 shall be inoperative if the amount of wages and/or fringe benefits is bonafidely disputed. In such instance, the Employer shall then pay the wages and/or fringe benefits admitted to be due and the balance shall be settled by the arbitration procedure as provided herein.

13. UNION SECURITY. All employees covered by this Agreement shall be required as a condition of employment, to apply for, and to become members of, and to maintain membership in, the Union within eight (8) days following the beginning of their employment or the effective date of this clause, or the signing of this Agreement, whichever is the later, provided, however, if the employee is employed solely in the Local Production of Materials and does no work at the job site, the word "eight (8)" shall, as to such employee, read "thirty-one (31)". This clause shall be enforceable to the extent permitted by law.

The Union recognizes its obligation and therefore assumes full responsibility to every employee discharged under the provisions of the article last above set out as a result of a written request from the Union to the Individual Employer of the employee.

Any employee discharged under the provisions of Article 13 while actively employed shall, before registering in a Referral Office for dispatch under this Agreement, tender to the Union the full initiation or reinstatement fee and current quarterly dues, and the Union shall issue receipt therefore. Upon presentation of such receipt to a Referral Office as evidence of such tender, the employee shall be permitted to register as if he had never been discharged for such non-payment.

14. WELFARE FUNDS. On work covered by this Agreement within the territorial jurisdiction of Local 181, the Employer agrees to pay, during the term of this Agreement, into the welfare fund of the respective local on the following basis:

Effective April 1, 2009, and thereafter during the life of this Agreement or any extension of same, the Employer shall pay to the International Union of Operating Engineers, Local 181, Health and Welfare Fund, the sum of seven dollars and twenty-five cents ($7.25) per hour for each hour worked or paid for by employees covered by this Agreement when they are employed in the territorial jurisdiction of Local 181. Aforesaid contributions shall be paid by the fifteenth (15^{th}) of the month following the month of accrual and failure to pay by the thirtieth (30^{th}) of the month shall be considered a violation of this Agreement. The welfare fund shall be administered in accordance with the provisions of applicable law.

Contributions to the welfare fund shall not be deemed wages due the employee.

14. Welfare Funds (continued)

Each Employer, signatory to or bound by this Agreement, agrees that his firm, partnership or corporation shall and does hereby become an "Employer" under the terms of the Agreement and Declaration of Trust forming the International Union of Operating Engineers Local 181 Health and Welfare Trust Fund, the effective date of said Agreement and Declaration of Trust being April 1, 1968. Said Employer further agrees to abide by all provisions, rules and regulations set forth in such Agreement and in the By-laws made by the authority thereof.

Upon written notice to the Employer from the Union at least 60 days prior to April 1, 2010 and April 1, 2011, the Employer agrees to increase its hourly contributions to the aforesaid Health and Welfare Fund in the amount specified by the Board of Trustees of the Health and Welfare Fund. The hourly wage scale then scheduled to go into effect shall be lowered in an amount equal to the increase in the hourly contributions to the Health and Welfare Fund.

15. PENSIONS. On work covered by this Agreement the Employer agrees to pay into the pension fund of Local Union 181 on the following mutually exclusive basis.

Effective April 1, 2009, and thereafter during the life of this Agreement and any extension thereof, the Employer shall pay monthly into the Central Pension Fund of the International Union of Operating Engineers and Participating Employers the sum of five dollars ($5.00) per hour for each hour worked or paid for while working in the territorial jurisdiction of Local 181. Said payments shall be made on the dates, in the manner and form, and in accordance with the rules and regulations as adopted by the Trustees of the Central Pension Fund of the International Union of Operating Engineers and Participating Employers.

Contributions to the Pension Fund shall not be deemed wages due the employee.

All welfare and pension funds, as set out in Articles 14 and 15 shall be administered in accordance with the provisions of applicable law.

It is understood and agreed that the Employer shall be bound to the terms and provisions of the Pension Trust Agreement that governs the Pension Fund described above as if the Trust Agreement was set forth in full herein.

Upon written notice to the Employer from the Union at least 60 days prior to April 1, 2010, and April 1, 2011, the Employer agrees to increase its hourly contributions to the aforesaid Pension Fund in the amount specified by said notice. The hourly wage scale then scheduled to go into effect shall be lowered in an amount equal to the increase in the hourly contribution to the Pension Fund.

16. APPRENTICESHIP AND TRAINING FUND. It is mutually agreed that the International Union of Operating Engineers, Local 181 Apprenticeship and Training Fund, registered with the Bureau of Apprenticeship and Training and the U.S. Department of Labor is a part of this Agreement as if set forth herein.

16. Apprenticeship and Training Fund (continued)

It is agreed that effective April 1, 2009, each Employer signatory to this Agreement, or facsimile thereof, will contribute to the Operating Engineers, Local 181 Apprenticeship and Training Fund forty cents ($0.40) per hour for each hour worked or paid for on all employees covered by this Agreement. Employer contributions shall be paid by the fifteenth (15^{th}) of the month following the month of accrual and failure to pay by the thirtieth (30^{th}) of said month shall be considered a violation of this Agreement.

Upon written notice to the Employer from the Union at least 60 days prior to April 1, 2010, and April 1, 2011, the Employer agrees to increase its hourly contributions to the aforesaid Apprenticeship and Training Fund in the amount specified by said notice. The hourly wage scale then scheduled to go into effect shall be lowered in an amount equal to the increase in the hourly contribution to the Apprenticeship and Training Fund.

It is understood and agreed that the Employer shall be bound to the terms and provisions of the Apprenticeship Agreement and Declaration of Trust governing the Apprenticeship Fund described above, as if the Trust Agreement were set forth in full herein.

All Health and Welfare, Pension and Apprenticeship and Training hourly contributions are due and payable at the Fund Office, International Union of Operating Engineers Local 181, P.O. Box 1179, Henderson, Kentucky 42419-1179.

17. HIRING. When the Employer performs work covered by this Agreement in the area covered by Local Union No. 181, the following shall apply:

The Employer will obtain all employees used in the performance of such work through the Referral Offices of the Union in accordance with the non-discriminatory provisions governing the operation of the Union's Referral Offices set out in the Union "HIRING PROCEDURE" as set forth in full herein, with the following provisions:

An employee covered by this Agreement shall be considered to have been hired and employed in Indiana. For all purposes, the employment of such person shall be governed by the laws of Indiana.

The Union and the Employer recognize that the Union is in a position to aid the Employer in recruiting needed employees who can promote the efficiency and safety of the operation of the Employers. The Employer agrees to notify the Union when new, additional or replacement employees are needed.

17. Hiring (continued)

The Union agrees to refer duly qualified applicants upon a non-discriminatory basis when so notified, and when furnishing same, shall do so in accordance with the minority percentages required of the Employer by the various federal agencies. (Inability to do so does not constitute a breach of contract by the Union.) The decision with regard to the hire and tenure of all employees shall be made by the Employer. The Employer shall be the sole judge as to the qualifications of any applicant for employment.

Except as otherwise indicated above, the Employer and the Union agree to the following Hiring Procedure for employees covered by this Agreement.

The Employer shall give the Union twenty-four (24) hours notice of its needs for workmen.

18. HIRING PROCEDURE. This hiring procedure agreement is entered into between _____ (hereinafter referred to as the Employer) and Local Union 181, International Union of Operating Engineers (hereinafter referred to as the Union) in order to provide the Employer with a means of securing an efficient and competent working force on a non-discriminatory basis, and in order to minimize the evils of casual employment by securing a fair distribution of work among the workers represented by the Union. To these ends the Employer and the Union agree as follows:

(A) The Employer shall give the Union twenty-four (24) hours notice of its need for workmen, and within such twenty-four (24) hour period shall not hire persons not referred by the Union. If, however, the Union fails to refer workers within such twenty-four (24) hour period after having been notified to do so, the Employer shall have the right to hire persons not referred by the Union.

(B) In notifying the Union of its needs for workers, the Employer shall specify to the Union (a) the number of workers required, (b) the location of the project, and (c) the nature and type of construction involved, (d) the work to be performed, and (e) such other information as may be necessary to enable the Union to make proper referral of applicants.

(C) The Employer shall have the right to determine the competency and qualifications of men referred by the Union, and the right to hire or not hire accordingly.

(D) The selection of applicants for referral to jobs shall be on a non-discriminatory basis and shall not be based on, or in any way affected by Union membership, bylaws, rules, regulations, constitutional provisions or any other aspect or obligation of Union membership, policies, or requirements.

(E) The Union shall register and refer all applicants for employment on the basis of the priority groups listed below. Each applicant shall be registered in the highest priority group for which he qualifies.

18. Hiring Procedure (continued)

GROUP A – All applicants who have worked as Operating Engineers for the past four (4) years; have been employed for an aggregate time of at least one (1) year during the last four (4) years by Employers who are parties to Collective Bargaining Agreements with the Union, not containing discriminatory referral provisions; and who have maintained residence for the past year within the geographical area constituting the normal construction labor market (as hereinafter defined).

GROUP B – All applicants for employment who have worked as Operating Engineers for the past four (4) years and have been employed for an aggregate time of at least six (6) months during the last four (4) years by Employers who are parties to Collective Bargaining Agreements with the Union, not containing discriminatory referral provisions.

GROUP C – All applicants for employment who have worked as Operating Engineers for the past two (2) years and who have maintained residence for the past year within the geographical area constituting the normal construction labor market (hereinafter defined).

GROUP D – All applicants for employment who have worked as Operating Engineers for one (1) year.

GROUP E – All other applicants for employment.

(F) The Union shall maintain a separate list for each of the five (5) Groups set forth above, and shall list the applicants within each Group in the order in which they register as available for employment.

(G) In referring applicants to the Employer, the Union shall first refer applicants in Group A in the order of their places on the list, and then refer applicants in the same manner successively from the lists for Groups B, C, etc. Any applicant who is rejected by the Employer shall be restored to his place on the list for his Group. When a registrant is referred for employment and is actually employed on a job for more than five (5) days, such registrant's name shall be removed from the list. When his employment terminates, he shall be registered at the bottom of the appropriate Group list on which he is entitled to be registered. If a registrant, upon being referred for employment in regular order, refuses to accept the employment, such registrant's name shall be placed at the bottom of the Group list on which he is registered.

(H) Re-registration for referral shall be accepted by the Union at any time during its customary office hours. New registrations shall be accepted by the Union at least once each week during office hours. Reasonable notice of new registration periods shall be posted by the Union in the union office and in any other place where notices to employees and applicants for employment are customarily posted.

18. Hiring Procedure (continued)

(I) The Union will use its best efforts to notify an applicant for referral when such applicant is to be referred to a job pursuant to the request of the Employer but assumes no obligation or responsibility for failure to locate such applicant.

(J) The priorities of referral set forth in Article 5 above shall be followed except that in cases where the Employer requires and calls for employees possessing special skills and abilities, the Union shall pass over any applicants on the register not possessing such special skills and abilities. The Employer shall request only men who are registered out of work in Group A only, and they shall have been a former employee who has worked for the requesting Employer in the past year in the geographical area. All requests shall be in writing. Applicant must have been on the referral register at least five (5) days before employee can be requested by the Employer. If an employee is called back to the same Employer within five (5) working days, such employment shall be considered continuous employment and shall be counted as such. In cases where the Union does not have twenty-four (24) or more hours to fill an order for referral for a few-day job (5 or less days) the Union may pass over applicants on the register in order to promptly fill the order.

(K) The Union shall require all job applicants who have not previously registered to submit a resume of experience and qualifications.

(L) In the event any job applicant is aggrieved with respect to the functioning of this Hiring Agreement, he may, within ten (10) days following the occurrence of the event which constitutes the basis for the grievance, file with the person in charge of registration and referral a written statement of the grievance clearly and specifically setting forth the wrong or violation charged. An Appellate Tribunal consisting of an Employer-Representative, a Union-Representative and an impartial Chairman appointed jointly by the Employer and Union, shall consider such grievance and render decisions which shall be binding. The Appellate Tribunal is authorized to issue procedural rules for the conduct of its business, but is not authorized to add to, subtract from, or modify any of the provisions of this Agreement and its decision shall be in accord with the Agreement.

(M) The Union and the Employer shall post in places, where notices to employees and applicants for employment are customarily posted, all provisions of this hiring hall Agreement.

18. Hiring Procedure (continued)

(N) Definitions

(1) "Normal construction labor market" is defined to mean the following geographical area:

All of Kentucky with the exception of Boone, Kenton, Campbell, and Pendleton Counties. The following counties in the State of Indiana:

Bartholomew	Brown	Clark	Crawford
Dearborn	Decatur	Dubois	Floyd
Franklin	Gibson	Harrison	Jackson
Jefferson	Jennings	Lawrence	Martin
Ohio	Orange	Perry	Pike
Posey	Ripley	Scott	Spencer
Switzerland	Vanderburgh	Warrick	Washington

The above geographical area is agreed upon by the parties to include the areas defined by the Secretary of Labor to be the appropriate prevailing wage areas under the Davis-Bacon Act to which this Agreement applies plus the commuting distance adjacent thereto, which includes the area from which the normal labor supply is secured.

(2) Resident – means a person who has maintained his home in the above defined geographical area for a period of not less than one (1) year or who, having a permanent home in this area, has temporarily left with the intention of returning to his permanent home.

(O) Any actions taken by employees or others resulting from the administration of the Hiring Hall will not result in any liability of any kind to any Employer covered by this Agreement.

Local No. 181 of the International Union of Operating Engineers has in effect with certain Employers a "Hiring Procedure" by which it refers to applicants for employment to said Employers. Copies of this "Hiring Procedure" are posted in the Local Union offices available to all interested parties. They are also posted on all jobs and projects where they are in effect, provided that the Employer has made available a place for their posting.

This "Hiring Procedure" provides that "Re-registrations for referral shall be accepted by the Union at any time during its customary office hours. New registrations shall be accepted by the Union at least once each week during office hours. Reasonable notice of new registration periods shall be posted by the Union in the union offices in any other place where notices to employees and applicants for employment are customarily posted."

18. **Hiring Procedure (continued)**

District 1 – 700 N. Elm St., Henderson, KY 42420
District 2 – 6500 Interchange Rd., N, Evansville, IN 47715
District 3 – 2902 Crittenden Dr., Louisville, KY 40209
District 4 – 121 Cherrybark, Lexington, KY 40503
District 5 – 924 Clark St., Paducah, KY 42001
District 6 – 2151 Greenup Avenue, Ashland, KY 41101

19. CONTINUITY OF EMPLOYMENT. To safeguard continuity of employment and thus protect unemployment insurance for employees, it is agreed that the Union shall not have the right to transfer Operators or Assistant to Engineer from one Employer to another, or to replace an employed Operator or Assistant to Engineer with another unless the Employer agrees to do so; provided, however, that the foregoing shall not permit the Union and/or the Employer, whether acting singly or in concert, by agreement or otherwise, to base any transfer or replacement upon membership or non-membership in the Union or upon any obligation or aspect thereof.

20. HEALTH AND SAFETY. The Employer shall furnish suitable shelter to protect the Engineer and Assistant to Engineer from falling materials and from the elements, such as hard hats, winter fans, heat housers, and umbrellas or canopies. The Employer shall furnish drinking water facilities and toilet facilities in compliance with the Indiana State Safety Code for the Construction Industry. It is further agreed that when the temperature on the job exceeds 65 degrees the Employer shall furnish pure iced water of 65 degrees or less, all in clean sanitary containers with disposable drinking cups.

The Employer shall maintain adequate first aid kit on all jobs where employees covered by this Agreement are employed and such kit shall be made easily accessible and available at all times.

Injuries of any nature whatsoever shall be reported by employees to their supervisor and all employees injured while at work will cooperate with their supervisors in making out accident reports as soon as possible after medical attention is given.

In case of injury sustained by an employee in the course of employment and requiring immediate medical attention, the Employer shall provide necessary transportation to the physician's office, clinic or hospital, and to the employee's home, if necessary. If the employee returns to work on the same day, he shall suffer no loss of time, and if sent home or to the hospital, shall be paid for the balance of the day's work period in which the injury was sustained. In no case shall such employee suffer loss of time when required to leave his job for treatment of three (3) hours or less for further treatment of such injury and the Employer will continue paying Health and Welfare contributions. Such contributions shall not exceed four (4) months.

21. COMPENSATION INSURANCE. The Employer shall carry Workmen's Compensation Insurance with a company authorized to do business under the applicable state laws and regulations, and shall, in addition, pay the tax necessary to secure for all such employees the benefits of the Indiana Unemployment Covmpensation Insurance Act irrespective of the number of employees employed.

22. PRE-JOB CONFERENCE. Every Employer who is or becomes a party to this Agreement shall notify the appropriate Referral Office of the Union prior to the performance of any work properly coming under the jurisdiction of the Operating Engineers on any project within the jurisdiction of the Operating Engineers on any project within the territorial jurisdiction of the Union, and the Employer shall inform the Union of the nature and classifications of Operating Engineers estimated to be required on the said project. The Employer shall meet with the Business Representative of the Union at a date, time, and place mutually agreeable for the purpose of holding a Pre-Job Conference. If an Employer wishes to request particular Key Operators for a project, it shall be discussed at the Pre-Job Conference. If, at a later date, work on said job or project is suspended for any length of time (such as winter months) or night shift is required, an additional Job Conference may be held, if requested, prior to the resuming of work or starting of night shift. In case of an emergency situation, the Employer may notify the Union of same, and the Employer and the Union may meet at a later date for the Pre-Job Conference. All Pre-Job Conferences shall be reduced to writing, on the form attached hereto as Exhibit A, and signed by both parties. At such Pre-Job Conference, the Employer shall make arrangements for the referral of employees to the project in accordance with the contractual referral provisions.

KEY MAN. Employer may request that his KEY MAN perform work on any project on work covered by this Agreement. KEY MAN shall be a member of the Operating Engineers, but may be affiliated with another local. Request for this KEY MAN shall be made by the Employer at the Pre-Job Conference, and approval of this request shall not be unreasonably withheld by the Union provided, however, the first Operating Engineer on the project shall be a member of IUOE, Local 181.

Further, the Union recognizes that in appropriate circumstances there is a need to move Key Men from one local jurisdiction to another as recognized by the Agreement of the Locals of the International Union of Operating Engineers, which comprise the North Central States Conference.

23. ACCESS TO JOB. Authorized representatives of the Local and International Unions shall have access to jobs where employees covered by this Agreement are employed to consult with the superintendent, steward or employees, providing the representatives comply with Employers and/or owner's safety rules and regulations.

24. SUB-CONTRACTORS. The Employer agrees that he, or any of his sub-contractors, shall not sub-contract any work coming within the occupational jurisdiction of the Operating Engineers Union, at the site of construction, except to a person, firm, or corporation willing to become a party to this labor Agreement. The Union agrees that any and all sub-contractors will be given an opportunity to sign this Agreement. DBE and WBE firms must be willing to become party to a labor Agreement.

25. SHIFT PROVISIONS. All provisions of the Agreement shall apply equally to all shifts with exceptions noted in Article 27 and 28. It is further agreed that there shall be no split shifts, nor shall an employee be required to work alone on a second or third shift if working alone would be considered hazardous; provided, however, that the purpose of this last mentioned provision is for safety alone and shall not be interpreted to require the employment of an additional engineer.

Shift provisions for projects set up on an **8-Hour Shift Schedule** at the Pre-Job Conference:

Articles 26, 27, and 28 of this Agreement shall apply.

Shift provisions for projects set up on a **10-Hour Shift Schedule** at the Pre-Job Conference:

If at the Pre-Job Conference the contractor elects to work on a 10-hour shift basis, the Employer shall continue this schedule except during November, December, January, February and March, during which months he may elect to work the 8-hour shifts in compliance with Articles 26, 27, and 28.

A. Single Shift. The Employer may work four (4) 10-hour shifts before overtime is paid and may use Friday as a "make-up" day provided that all work beyond ten (10) hours per day or forty (40) hours per week or all work on Saturday is paid at the time and one-half (1-1/2) rate. Friday may be used as a make-up day only for inclement weather or in weeks with a holiday falling Monday through Thursday; otherwise time worked on Friday will be paid at the time and one-half (1-1/2) rate.

The regular work day shall consist of ten (10) consecutive hours commencing at 7:00 a.m., unless otherwise mutually agreed upon, with a meal period of one-half (1/2) hour on the employee's time at mid-point of shift.

The starting time will apply to all employees, and exceptions will be made for certain equipment on which, due to the nature of the work, the same hours of work would not be practical and such exceptions shall be made by mutual agreement.

B. Two-Shift Operation. Where the Employer elects to work two (2) shifts, each such shift shall be not less than ten (10) hours. The first shift shall start at 6:00 a.m. and will be entitled to a one-half (1/2) hour paid meal period at mid-point of shift. Second shift employees will be entitled to a one-half (1/2) hour paid meal period at mid-point of shift. The applicable base rate listed in Schedule "A" plus five percent (5%) shall be the basic straight time rate for all time worked or paid for on second shift.

26. SINGLE SHIFT. On a single shift job, the regular work day shall consist of eight (8) consecutive hours commencing at 7:00 a.m., unless otherwise mutually agreed upon, with a meal period of one-half (1/2) hour on the employee's time between the fourth and fifth hour. The starting time will apply to all employees, and exceptions will be made for certain equipment on which, due to the nature of the work, the same hours of work would not be practical and such exceptions shall be made by mutual agreement.

27. TWO SHIFT OPERATION. Where the Employer elects to work two (2) shifts, each such shift shall be not less than eight (8) hours. On a two (2) shift job, the first shift shall start at 6:00 a.m. and will be entitled to a one-half (1/2) hour paid meal period at mid point of shift. Second shift employees will be entitled to a one-half (1/2) hour paid meal period at mid-point of shift. The applicable base rate listed in Schedule "A," plus five percent (5%) shall be the basic straight time rate for all time worked or paid for on second shift.

28. THREE SHIFT OPERATION. On a three (3) shift job, the regular work day of the first shift shall consist of eight (8) consecutive hours commencing at 8:00 a.m., with a paid meal period of one-half (1/2) hour between the fourth and fifth hour. The regular work day of the second shift shall consist of eight (8) consecutive hours commencing at 4:00 p.m., with a paid meal period of one-half (1/2) hour between the fourth and fifth hour. The applicable base rate listed in Schedule "A," plus five percent (5%) shall be basic straight time rate for all time worked or paid for on second shift. The regular work day of the third shift shall consist of eight (8) consecutive hours commencing at 12:00 midnight, with a paid meal period of one-half (1/2) hour between the fourth and fifth hour. The applicable base rate listed in Schedule "A," plus 10 percent (10%) shall be the basic straight time rate for all time worked or paid for on the third shift.

29. REPORTING TIME. Employees shall report every work day unless otherwise notified by quitting time the previous day and shall receive two (2) hours pay at the applicable rate for reporting. If he starts work he shall be paid for four (4) hours, if on 8-hour shift schedule. If he works over four (4) hours, he shall be paid for eight (8) hours, unless due to inclement weather after the first four (4) hour period, then he shall be paid at the applicable rate for the actual hours worked, if on 8-hour shift schedule. If he works over five (5) hours, he shall be paid for ten (10) hours, unless due to inclement weather after the first five (5) hour period, then he shall be paid for the actual hours worked, if on 10-hour shift schedule. However, the employee may be required to remain on the job for all hours worked or paid for. If he reports for work, is sent home and called back the same day, he shall be paid for the full shift at the applicable rate. When an employee, who regularly operates a particular piece of equipment, is told not to report for work and the Employer subsequently determines to operate the equipment, the employee who was told not to report for work and who regularly operates the particular piece of equipment shall be given first chance to perform the work. If the equipment regularly assigned to an employee is operated by another employee, both employees shall be paid in accordance with the terms of this Agreement. In the event this employee is laid off, the provision of this article will remain in effect for a period of five (5) working days.

30. WAITING PERIOD. The Employer may put employees "on call" due to inclement weather or suspension of work for a period not to exceed seven (7) calendar days. After such waiting period employees shall be deemed laid off and may report out of work to their respective referral office. It is hereby understood that this clause has no application to work suspension caused by labor disputes.

31. PREMIUM DAYS. When an employee is requested to report for work on Saturdays, Sundays, or holidays; his time shall be pursuant to the provisions set forth in Article 29, except he shall be paid the overtime rate of pay in accordance with Article 32.

32. OVERTIME. Employees shall be paid one and one-half (1-1/2) times the established hourly rate for all hours worked in excess of eight (8) hours per day, on an 8-hour shift basis, or in excess of ten (10) hours on a 10-hour shift basis. All time worked or paid for on Saturday shall be paid for at one and one-half (1-1/2) times the established hourly rate.

All time worked or paid for on Sundays and holidays shall be paid double the established hourly rate.

All overtime shall be paid for by the hour or half-hour. Any fractional part of a half-hour shall be a half-hour.

33. REMAIN ON JOB. The employee shall remain on the job for the period for which he is entitled to be paid. If the employee leaves the job of his own accord, for reasons other than an industrial accident, he shall be paid only the hours actually worked. However, if for any reason the employee is required to remain on the job longer that the two (2) hours reporting time, he shall be paid in accordance with Article 29.

34. ASSISTANT ENGINEER, HELPER, AND APPRENTICE EQUIPMENT COVERAGE.

(A) An Operator and an Assistant Engineer shall be employed on the following equipment: cable cranes over 35 ton; hydraulic cranes over 35 ton; truck cranes over 35 ton; trenching machines over 24", rock trenching machines, gradealls; locomotives, automated sub-graders; PCC formless pavers, guardrail drivers, hydraulic backhoes over 2-1/2 cubic yard capacity; caisson and core drilling machines.

When an Assistant Engineer is employed on the above equipment, he shall, in addition to those duties, be allowed to operate four (4) pieces of minor equipment and may also operate other unassigned equipment on the project intermittently (not to exceed two (2) hours per shift) and shall be paid the combination rate.

(B) Assistant Engineers are NOT required on the following equipment: hydraulic cranes (cherry picker or one-cab type); cranes or clamshells when such are used for handling or rehandling processed aggregates; truck crane or gradeall equipped with remote control unless such machines are over 2-1/2 cubic yard or 35 tons lifting capacity; hydraulic backhoes two and one-half (2-1/2) cubic yards and under; truck mounted concrete pump.

If a second man is required on any of the above equipment, he shall be an Assistant Operating Engineer.

(C) On machines listed above where an Assistant to Engineer is not required and the Operator does not have ample time to service the machine during the regular shift, the Operator shall be paid one (1) hour per shift at one and one-half (1-1/2) times the base rate to grease, oil, and clean the machine. The Operator shall do such preparatory work either prior to the crews regular

34. Assistant Engineer, Helper, and Apprentice Equipment Coverage (continued)

starting time or immediately after the regular quitting time. Such time is at the discretion of the Employer.

35. MECHANICS. Mechanics are employed by the Employer because of their knowledge of equipment and their ability to make whatever repairs may be required. All maintenance, repair work or mechanical work performed on the job site on the equipment operated on the job site by employees covered by this Agreement shall be done in accordance with the terms of this Agreement and by mechanics assisted only by another mechanic or as otherwise provided.

36. BREAKDOWNS. It is agreed that when a machine breaks down and the Engineer is not assigned to other work covered by this Agreement, the Engineer and Assistant, if any, shall be retained at the regular rate of wages for the completion of the shift and shall assist a mechanic or mechanics, if any, assigned to repair such machine. When repair work on any machine continues for subsequent shifts and assistance is required, the Engineer assigned to the machine shall be retained to assist the mechanic or mechanics; if said Engineer is assigned to operate another machine, and assistance is required, an employee included in the bargaining unit covered by this Agreement shall be employed as a mechanic helper. Engineers assigned temporarily to another machine during said breakdown period shall be considered assigned for the purpose of additional hours or days of work or until his regularly assigned machine is placed back into operation.

37. HELICOPTERS. The use of helicopters (external loads) under the terms of this Agreement shall require a three (3) man crew, one (1) pilot and two (2) controllers. The pilot and controllers must have direct radio communications during the actual hoisting operation.

38. PLANT WORK. It is agreed that a Plant Engineer shall be employed on all asphalt plants, if said plants are otherwise covered by this Agreement. It is agreed that a Plant Engineer and an Assistant Plant Engineer shall be employed on central mix plants, gravel processing plants and rock crushing plants, if said plants are otherwise covered by this Agreement.

39. MINOR EQUIPMENT. When minor equipment is put in operation on a job or project and an Assistant to the Engineer is employed, such employee may operate up to four (4) pieces of minor equipment in addition to his regular machine at the combination rate as set forth in Article 41 and Schedule "A." In the event there is not an Assistant to the Engineer employed, and an Engineer assigned to other equipment is employed, such Engineer may operate up to four (4) pieces of minor equipment at the combination rate as set forth in Article 41 and Schedule "A" in addition to his regular machine, providing such equipment is within reasonable distance. If neither Assistant to the Engineer or an Engineer assigned to other equipment is employed on the job or project, and any minor equipment is put into operation, an Operating Engineer will be employed to operate said equipment. Neither an Assistant to Engineer nor an Engineer assigned to other equipment will be permitted to operate more than four (4) pieces of minor equipment on combination rate.

39. Minor Equipment (continued)

When more than four (4) pieces of minor equipment are put into operation an Operating Engineer shall be employed at the rate set forth in Schedule "A." Such Operating Engineer shall be permitted to operate up to and including five (5) pieces of minor equipment or combination of minor equipment, except that combinations cannot include more than two (2) air compressors.

An Operating Engineer shall be employed to operate: (1) one throttle valve; (2) one throttle valve and a compressor; or (3) a throttle valve and a boiler at the rate set forth in Schedule "A," or one air compressor 210 cu. ft. capacity or over.

MINOR EQUIPMENT DEFINITION. For the purpose of definition in Article 39, minor equipment shall be defined as air compressor of less than 210 cu. ft. capacity, pump, welding machine, conveyor, generator, and mechanical heater.

40. ADDITIONAL EQUIPMENT. It is understood that all equipment for which classifications and wage rates have been established in this Agreement, and including that equipment for which classifications and wage rates may hereafter be established, shall be manned, when operated, by employees in the bargaining unit and paid the rates as specified in this Agreement.

Where remote, laser or GPS Systems are used to operate the equipment listed in the wage classification of this contract, such work for operating purposes shall be the jurisdiction of the Operating Engineers.

When equipment not listed in Schedule "A" of this Agreement is introduced on a job site, the rate of pay for said equipment shall temporarily be classified as coming under Class B of Schedule "A" until the Employer and the Union meets to establish a wage rate. Such parties shall meet within ten (10) days to establish the wage rate and working rules. If the parties agree upon a wage rate that falls within Class A, such wage rate will be retroactive to the date the equipment was first used on the job site. In no event shall work coming within the occupational jurisdiction of the Union be assigned to any other craft employee.

41. COMBINATION RATE. Combination rate shall mean fifty cents ($0.50) per hour above the basic hourly rate of pay.

42. CHANGING MACHINES. Any Operator capable of performing the work may be shifted by the Employer to any machine and back again to the original machine, provided the Operator is paid the rate of wages applicable to the highest classification of work performed by him during such shift. Any employee covered by this Agreement shall not be permitted to change to a machine that another employee covered by this Agreement has been employed to operate unless the latter has been discharged for just cause, and the Union has been notified of such discharge. However, if through no act or fault of the Employer, the regular assigned employee is not available for work, this clause shall not be operative. Changing employees from one machine to another shall not be used for the purpose of depriving another employee from additional hours or days of work. Provided, further, that the

42. Changing Machines (continued)

parties may by mutual agreement provide that the foregoing limitations are inapplicable due to project circumstances.

43. PAY PERIOD. The Employer shall pay all employees covered by this Agreement weekly and the payment shall be in full for the payroll period. Payment shall be made within six (6) days of the close of the payroll period, but not later than Friday, and shall be in cash or by check or direct deposit as authorized by each employee and as mutually agreed upon by the Employer and the Operating Engineers Local. Each weekly pay shall be accompanied by a statement listing the name of the employee and employer, the date, the number of hours worked, both straight and overtime, the monies deducted for what purposes said deductions were made.

44. PAYDAY. When payday is established, the employees shall be paid on the job before quitting time of such payday. If the employee has to wait more than fifteen (15) minutes after quitting time to receive his pay, he shall be paid at the overtime rate of pay for such waiting time. If the employee has to travel to the company office after quitting time to receive his pay, he shall be paid two (2) hours of pay at the straight time rate for traveling to such office. If due to inclement weather or other reasons no work is available on payday, the employee shall report to work at starting time to receive his pay and receive two (2) hours time for reporting provided he has not been previously paid for such pay period. The employee must remain for the two (2) hours reporting time and be available for work unless he is sent home by the Employer or his representative. Employers shall pay, in full, all employees laid off indefinitely or discharged.

If for any reason, the Employer is not able to pay the discharged employee in accordance with the preceding Article, such employee may, at his option, demand that the Employer mail the check to him the following day or may make arrangements to pick up such check; provided, however, that if he picks up the check, he shall receive two (2) hours show up time pay.

45. WAGE STATEMENT. Each employee when paid shall receive a slip showing the number of straight and overtime hours, his straight time hourly rate and all deductions and payments required by law or in this Agreement.

The wages and other economic terms provided for within this Agreement shall prevail upon all work for which a bid is submitted during the existence of the Agreement, and in the event of the successful renegotiation of this Agreement, then for a project in progress at the effective date of the new Agreement the wages and economic terms provided for herein shall continue in effect for sixty (60) days after the effective date of such renegotiated contract or the completion of the work, whichever occurs first.

46. TRANSPORTATION. The transportation by means of its own power of equipment operated by employees covered by this Agreement shall be performed by employees covered by this Agreement.

46. Transportation (continued)

No employee covered by this Agreement shall furnish transportation within the job sites or from yard to job site for transportation of employees or tools or equipment or for any other purpose as a condition of employment. The Employer shall furnish a safe and suitable storage place for tools. When the Employer transports employees from yard to job site or within job site or to power lines or pipelines, he shall provide safe and suitable transportation.

47. HOLIDAYS. The following days are recognized as holidays: Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, the day after Thanksgiving, Christmas Day, and New Years Day. If any of the above named holidays falls on Sunday, the Monday immediately following shall be observed as the legal holiday. No work shall be performed on Labor Day except in an emergency where life or property is in danger.

48. DEWATERING. Dewatering systems shall include electrical submergible pumps, electrical well pumps and other electrical pumps. The dewatering systems shall be installed, maintained and operated the same as well point systems. There shall be no set number of pumps in a system but the pumps shall be within a reasonable area.

On continuous pumping operations, the Employer shall be allowed to set up six (6) hour pumping shifts, or eight (8) hour pumping shifts. Type of shifts shall be decided at the Pre-Job Conference. Overtime on continuous pumping operations shall be computed at time and one-half (1-1/2).

If a dewatering system or pumping operation contains maintenance free pumps, it shall be mutually agreed between the Employer and Business Representative that if no maintenance or surveillance is required on the second or third shift, then the Union will not require the equipment to be manned during this time provided that if any personnel, including other trades' supervisory personnel or security personnel are required to provide surveillance of pumping system, then that person shall be an Operating Engineer.

49. STEWARDS. The Business Representative of the Union may appoint Stewards whose duty shall be to report to his Project Superintendent and/or his Business Representative all violations of this Agreement. In slack season he shall be the last employee to be laid off, providing he is qualified in the judgment of the Employer, and under no condition shall he be discriminated against because of his position of Steward. Under no condition shall the Steward be discharged until the Business Representative has been given twenty-four (24) hours notice. Stewards shall not have authority to call a work stoppage for any reason.

During working hours, the Business Representative of the Union may confer with the Superintendent, Foreman, or Steward when necessary so long as there is no interference with work. The Business Representative shall notify management before entering the job.

50. ADMINISTRATIVE DUES CHECK-OFF. The Employer agrees to deduct from the pay of the employees covered by this Agreement an administrative dues deduction. Before any such deduction is made, the Union shall furnish to the Employer a properly signed authorization card for the employees permitting such deduction. Such deduction shall be remitted to the Local Union on a monthly basis on the forms and in the manner prescribed by the Local Union.

The Union agrees to hold the Employer harmless from any and all suits, claims or legal proceedings which arise as a result of enforcement of this Article or compliance with this Article by the Employers.

Exception: Any administrative dues monies withheld will be deemed as wages and collection thereof will be in accordance with Article 11 of this Agreement.

51. INDUSTRY ADVANCEMENT FUND.

Section 1 – Each Employer is to contribute to the Indiana Constructors Industry Advancement Fund ("ICIAF"), or to a successor fund approved by the ICIAF Committee, THIRTEEN CENTS ($0.13) per hour, or whatever amount the ICIAF Committee determines is appropriate from time to time, for each hour worked by each employee working under this Agreement.

Section 2 – The contribution to ICIAF shall be deposited no later than the twelfth (12^{th}) of the following month for the preceding month, or at such other regular intervals as may be determined by the ICIAF Committee to the depository designated by the ICIAF Committee and such contribution shall be reported on such forms as may be designated by the ICIAF Committee.

Section 3 – The activities of ICIAF shall be determined by the ICIAF Committee and shall be financed from the payments herein provided. The Employer expressly ratifies and adopts the ICIAF Policy Statement. The Employer expressly acknowledges the substantial benefits that are rendered to it as a result of ICIAF. By execution of this Agreement, the Employer ratifies all actions taken or to be taken by the ICIAF Committee within the scope of its authority.

Section 4 – The Employer hereby agrees that the designated representative of the Highway, Heavy, and Utility Division – ICA, Inc., or the ICIAF Committee, shall be permitted, upon request, to audit the payroll records of the Employer to determine compliance with this Article. In the event of an audit, or if a lawsuit is commenced to collect any apparent delinquencies, the Employer agrees to be responsible for, and to pay, all expenses and costs of the audit and/or collection, including reasonable attorney's fees, incurred by the Highway, Heavy, and Utility Division – ICA, Inc. and/or ICIAF. It is further understood that such Employer shall be obligated to pay any delinquent contributions to ICIAF with interest charged at the rate then applicable to Internal Revenue Service collection of delinquent and/or unpaid taxes.

Section 5 – It is expressly agreed and understood that no Employee, Employer or Union has any vested or proprietary interest in, or right to, any sum constituting a part of ICIAF.

52. SUBSTANCE ABUSE TESTING PROGRAM. All signatory Employers to this Agreement and the Union have a commitment to protect people, and property, and to provide a safe working environment. The purpose of the Indiana Constructors, Inc. Substance Abuse Testing (SAT) Program is to establish and maintain a drug free, alcohol free, safe, healthy work environment for all of its employees covered by this Agreement.

Each employer agrees to pay to the Substance Abuse Testing (SAT) Program three cents ($0.03) from April 1, 2009 to March 31, 2012 for each hour worked by each employee working under this Agreement.

The contributions to the SAT Program shall be deposited each month, or at such regular intervals as may be determined by the Highway, Heavy, and Utility Division – ICA, Inc. ("Association") to the depository designated by the Association and such contributions shall be reported on such forms as may be designated by the Association.

The Employer hereby agrees that the designated representative of the Association shall be permitted, upon request to audit the payroll records of the Employer to determine compliance with this Article. In the event a lawsuit is commenced to collect any apparent delinquencies, the Employer agrees to be responsible for, and to pay, all expenses and costs of collection, including reasonable attorney's fees incurred by the Association.

It is expressly agreed and understood that no Employee, Employer, or Union has any vested or proprietary interest in or right to any sum constituting a part of such Substance Abuse Testing Program.

53. PROJECT AGREEMENT. It is mutually agreed that on projects for which no predetermined wage rate is established or a predetermined wage rate is less than the current Local 181 wage and fringe benefit package, contractors signatory to this Agreement may be given a Market Recovery Grant or Project Agreement, or Job-Site Agreement.

Provided further, that the Union shall be given five (5) working days notice of the signatory contractor's intention to bid such project, and then, should a difference of opinion arise pertaining to the scope of work on such project, the difference of opinion shall be settled in accordance with Article 10 of the current Indiana Highway, Heavy, and Railroad Construction Agreement.

54. GENERAL PROVISIONS. This Agreement covers the entire understanding between the parties hereto. No oral or written rules, regulations, or understandings not incorporated herein will be of any force or effect upon any party hereto.

It is agreed by the parties that periodic meetings shall take place between the negotiators of this agreement to discuss any differences in interpretation and enforcement of the Collective Bargaining Agreement. However, it is to be understood that such meetings are not a substitute for the arbitration proceedings specified in Article 10 of this Agreement.

55. SAVING CLAUSE. Any provisions contained herein that is contrary to or in violation of the Labor-Management Relations Act of 1947, or of any Federal or State law now in force or hereinafter enacted or hereafter becoming effective shall be void and of no force or effect, and this contract shall be construed as if said void provision herein were not a part thereof, it being intended, however, that the other provisions of this contract shall not be affected thereby. It is further agreed that should compliance with any Federal or State law, or amendment thereof, of any order, decision, or regulation issued thereunder, now or hereafter in force and effect, prohibit the carrying out of any of the provisions of this Agreement, then to the extent of such deviation or prohibition, this Agreement shall be deemed to have been automatically amended, effective on the effective date of such law, order, decision or regulation. Such amendment to this contract shall remain in effect only so long as said law, amendment, order, decision, or regulation continues in force, or until the expiration of this Agreement, whichever event shall first occur.

56. EFFECTIVE DATE. As part of this Agreement, it is agreed that the terms and conditions, including wage rates, of the preceding Collective Bargaining Agreement shall continue and remain in full force and effect from April 1, 2009 through March 31, 2012. Thereafter, the terms and conditions of this Agreement, including wage rates, shall be in full force and effect from April 1, 2009, if and when ratified by a majority of the members of the Highway, Heavy, and Utility Division – ICA, Inc., who have authorized said organization and its Labor Committee to bargain with Local Union 181 and their duly authorized representatives and when ratified by the Union and signed by both parties and continued for the period next ensuing, expiring as of March 31, 2012. Provided, however, that the terms of this Agreement shall prevail on all work for which a bid is submitted during the existence of the Agreement and shall continue to prevail on all such work until completed. Provided further, that the wages and fringes stipulated herein effective April 1, 2009, shall be effective as of April 1, 2009, and shall continue to prevail until March 31, 2010, and shall be applicable for all work performed during that period; the wages and fringes stipulated herein effective April 1, 2010, shall be effective as of April 1, 2010, and shall continue to prevail until March 31, 2011, and shall be applicable for all work performed during that period; the wages and fringes stipulated herein effective April 1, 2011, shall be effective as of April 1, 2011, and shall continue to prevail until March 31, 2012, and shall be applicable for all work performed during that period.

In case either party to this Agreement wishes to change the Agreement, at least sixty (60) days notice in writing shall be given to the other party prior to the expiration date, which is March 31, 2012. If such notice is given, the parties will meet not less than sixty (60) days prior to the expiration date for the purpose of commencing negotiations for a new Agreement. In case no notice is given by either party, this Agreement shall continue in effect year after year until such notice is given at least sixty (60) days prior to any anniversary date, subsequent to the expiration date.

Except as provided above, the new Agreement effective April 1, 2009, through March 31, 2012, may be re-opened to negotiate adjustments in economics, if and when Federal Davis-Bacon Law or the Indiana State Prevailing Wage Law is repealed or modified to the extent that it would be a detriment to signatory contractors in being competitive on Highway, Bridge, Utility and Railroad projects.

56. **Effective Date (continued)**

It is agreed that prior to re-opening the Agreement either party may request, in writing, a joint meeting between the "Employers" and the "Union." This meeting shall take place within seven (7) days. After seven (7) days if no Agreement has been agreed upon, then anytime thereafter a five (5) day advanced written notice may be given of desire to re-open the contract by either party.

The parties shall have sixty (60) days from that date of notice to reach an Agreement. If at the end of the sixty (60) day period no Agreement has been agreed upon, the contract shall expire on the next anniversary date. Each party shall have reserved to itself its full economics and legal options, including but not limited to strike or lockout.

Operating Engineers Local 181

THIS AGREEMENT has been ratified, signed, and sealed as of April 30, 2009 by the following:

PARTY OF THE FIRST PART, "EMPLOYER"

Berns Construction Company, Inc.
MK Betts Engineering & Contracting, Inc.
Bowen Engineering Corporation
Calumet Civil Contractors, Inc.
Crider & Crider, Inc.
Deig Bros. Lumber & Construction Co., Inc.
James H. Drew Corporation
E & B Paving, Inc.
Far West Construction, Inc.
Feutz Contractors, Inc.
Fox Contractors Corp.
Gradex, Inc.
HIS Constructors, LLC
Hi-Way Paving, Inc.
The Hoosier Company, Inc.
Hunt Paving Company
Javelina Construction, Inc.
JBI Construction, Inc.
Kreager Bros. Excavating, Inc.
LaPorte Construction Co., Inc.
Lutgring Bros., Inc.
Martell Electric, LLC
R.L. McCoy, Inc.
McCrite Milling & Construction Co.
Mid America Milling Company
Midwest Mole, Inc.
Morphey Construction, Inc.
Mt. Carmel Stabilization Group, Inc.
Phend & Brown, Inc.
Poindexter Excavating, Inc.
Rieth-Riley Construction Co., Inc.
J.H. Rudolph & Co., Inc.
Sims and Pedigo Co., Inc.
Slusser's Green Thumb, Inc.
Specialties Company, LLC
ST Construction, Inc.
WB Koester Construction, LLC
Weddle Bros. Highway Group, LLC

Operating Engineers Local 181 (continued)

HIGHWAY, HEAVY, AND UTILITY DIVISION – ICA, INC.

5-27-09
Steven R. Crider, Chairman

5/22/09
Charles V. Kahl, President

PARTY OF THE SECOND PART, "OPERATING ENGINEERS, LOCAL 181"

Freddie R. Blaylock, Business Manager

John Brothers, President

Howard T. Hughes, Recording Secretary

SCHEDULE "A"

Employees employed on the named machines or classifications as set out in this Schedule "A" shall be employed at the rates per hour for wages, health and welfare, pension and training as hereinafter in Class A-1, A, B, and C and the appropriate Apprentice Schedule.

CLASS A-1

Operating Engineers possessing 3rd party certification: (NCCCO) – National Commission for the Certification of Crane Operators or (OECP) – Operating Engineers Certification Program will be paid Class A-1.

Cherry Picker – ALL
Crane or Derrick
Gantry
Hoist 2-drum and over
Hydraulic Boom Truck
Overhead Crane
Pile Drive – Skid or Crawler
Rough Terrain Crane
Tower Crane

Class A-1 Wages

EFFECTIVE DATE	WAGES	H/W	PENS.	TRNG.	ICIAF	SAT	GROSS
April 1, 2009	$27.45	7.25	5.00	.40	.13	.03	$40.26
April 1, 2010	To be determined				.13	.03	$41.56
April 1, 2011	To be determined				.13	.03	$43.06

CLASS A

Air Compressor in Manifold with throttle valves
Asphalt Plant Engineer
Auto Grade or similar type machine
Auto Patrol
Backhoe – all
Ballast Regulator (R.R.)
Bituminous Mixer
Bituminous Paver
Bituminous Plant Engineer
Bulldozer
Caisson Drilling Machine
Cherry Picker – all
Chip Spreader – self-propelled
Cold grinder or similar type equipment
Concrete Mixer – 21 cu. ft. or over
Concrete Pump – truck mounted
Core Drilling Machine
Hydraulic Boom Truck
Hydro – demolition equipment
Keystone (Skimmer Scoop)
Laser Screed
Loader – self propelled (belt chain wheel)
Locomotive Operator
Mechanic
Milling Machine
Mucking Machine
Multi-bank Drill Operator
Panel Board Concrete Plant-central mix type
Paver – Hetherington
Pile Driver – skid or crawler
Overhead Crane
Road Paving Mixer
Rock Breaking Plant
Rock Crushing Plant - portable

SCHEDULE "A" (continued)

Crane or Derrick with any attachment including: Clamshell, dragline, shovel, backhoe, etc.
Dredge Operator
Drilling Machine on which the drill is a integral part
Earth Mover – rubber tired (paddle wheel, 619, 631, TS24, or similar type)
Earth Mover – rubber tired, tandem - 50 cents per hour additional
Elevating Grader
Endloader – hilift shovel
P.C.C. Formless Paver
Gantry
Gator Tiller
Gradeall
Gravel Processing Plant, portable
Guardrail Post Driver Operator
Head Greaser
Hilift Shovel – endloader
Hoist, 2-drums and over
Helicopter – Crew
Hydraulic Boom Truck (Pittman)
Roller – Asphalt, Waterbound Macadam, Bituminous Macadam, Brick Surface
Roller – with dozer blade
Root Rake – tractor mounted
Rough Terrain Crane
Seaman Tiller
Self-Propelled Hydraulic Drill
Self Propelled Widener
Spider or Snorkel Crane
Stump Remover – Tractor Mounted
Surface Heater and Planer
Tandem Push Tractor – 50 cents per hour additional
Tower Crane
Tractor – boom, winch, or hoe head
Tractor – push
Tractor with scoop
Tractor Mounted Spreader
Tree Mover
Trench Machine (over 24")
Tug Boat Operator
Welder
Well Drilling Machine

Class A Wages

EFFECTIVE DATE	WAGES	H/W	PENS.	TRNG.	ICIAF	SAT	GROSS
April 1, 2009	$26.45	7.25	5.00	.40	.13	.03	$39.26
April 1, 2010	To be determined				.13	.03	$40.56
April 1, 2011	To be determined				.13	.03	$42.06

CLASS B

Air Compressor with throttle valve or Clever Brooks type combination
Articulating Dump Truck or similar (off road)
Backfiller
Base Paver – Jersey or similar type machine
Bull Float
Concrete Finishing Machine
Concrete Mesh Depressor – independently operated
Paving Breaker
Broom, self-propelled
Pull Grader, power controlled
Refrigerating Machine – freezing operation
Roller – earth and sub-base material
Ross Carrier (straddle buggy)
Sheepfoot roller – self-propelled without blade
Tamper – Multiple Vibrating, Asphalt Waterbound Macadam, Bituminous Macadam, Brick Surface

SCHEDULE "A" (continued)

Concrete Spreader – Power Driven
Dredge Engineer
Excavator Loader – portable
Fireman – on boiler
Forklift – regardless of ton
Hoist – 1-drum
Mesh or Steel Placer
Minor Equipment Operator – 5 pcs.
Multiple Tamping Machine (R.R.)
P.C.C. Concrete Placer
Tamper – Multiple Vibrating, earth and sub-base material
Telescoping Rock Spreader
Trench Machine, 24" and under
Tube Float
Well Point System
Widener – Apsco or similar type
Winch Truck with A-Frame

Class B Wages

EFFECTIVE DATE	WAGES	H/W	PENS.	TRNG.	ICIAF	SAT	GROSS
April 1, 2009	$23.90	7.25	5.00	.40	.13	.03	$36.71
April 1, 2010	To be determined				.13	.03	$38.01
April 1, 2011	To be determined				.13	.03	$39.41

CLASS C

Air Compressor
Assistant to Engineer – Oiler
Assistant Plant Engineer
Automatic Dry Batch Plant
Bituminous Distributor
Bituminous Patching Tamper
Belt Spreader
Broom and Belt Machine
Brush Burner
Chair Cart – Self-propelled
Coleman Type Screen
Cold Grinder Oiler
Concrete Mixer – less than 21 cu. ft.
Conveyor, portable
Curb Machine
Deckhand
Digger, posthole, power driven
Farm Tractor- incl. farm tractor w/all attachments except backhoe, hilift endloaders
Form Grader
Form Tamper, motor driven
Generator
Greaser Helper
Gunite Machine
Hetherington Driver
Hetherington Helper
Hydra Seeder
Mechanic's Helper
Mechanical Heater
Minor Equipment Operator, 1 thru 4 pcs
Outboard or InBoard Motor Boat
Power Curing Spraying Machine
Power Saw – concrete, power driven
Pug Mill
Pull Broom, power type
Slurry Seal Machine
Spike Machine
Spreader
Straw Blower or Brush Mulcher
Stripe Removal Machine
Striping Machine – paint, motor driven
Sub Grader
Throttle Valve
Tractaire with drill
Truck Crane and Multi-Drill Oiler-Driver
Water Pump

SCHEDULE "A" (continued)

Class C Wages

EFFECTIVE DATE	WAGES	H/W	PENS.	TRNG.	ICIAF	SAT	GROSS
April 1, 2009	$21.87	7.25	5.00	.40	.13	.03	$34.68
April 1, 2010	To be determined				.13	.03	$35.88
April 1, 2011	To be determined				.13	.03	$37.28

MEMORANDUM OF PRE-JOB CONFERENCE – EXHIBIT A

The undersigned hereby agree that this job is covered by the terms of the current Agreement as executed by the International Union of Operating Engineers, Local 181, and the Employer.

Meeting Place_____ Date_____ Time_____

Contractor Rep._____ Supt._____

Type Project_____ Starting Date_____

Job Location_____

Field Office_____ Phone_____

Health & Welfare and Pension Discussed	Health & Welfare and Pension Forms to be Mailed	Health & Welfare and Pension Forms given to Employer at Pre-Job Conference
Yes_____ No_____	Yes_____ No_____	Yes_____ No_____

SUB-CONTRACTORS

Excavating and Grading

Masonry_____ Mechanical_____

Roofing_____ Mechanical_____

Structural_____ Painting_____

EQUIPMENT TO BE USED ON JOB OR PROJECT

No.	**Type of Equipment**	**Approximate Starting Date**
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Total_____

Bargaining Agreement_____ Highway Agreement_____

Underground Utility Agreement_____ Building Agreement_____

MEMORANDUM OF PRE-JOB CONFERENCE – (cont.)

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 181

FIRM NAME

_____ _____

Business Manager

_____

Assistant Representative

By _____

Title _____

Date _____

It was agreed as follows:

No. 1 Key men shall be used to fill the following key classifications:

No.	Type of Equipment	Approximate Starting Date

Total _____

No. 2 Except as in No. 1 above set out; all other persons performing work of Operating Engineers on the above project will be secured through the appropriate Referral Office of Local Union No. 181 in accordance with the Agreement between Employer and Union.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 181

FIRM NAME

_____ _____

By _____ By _____

Title _____ Title _____

Date _____ Date _____

ADDENDUM TO

THE AGREEMENT

by and between

HIGHWAY, HEAVY, AND UTILITY DIVISION – ICA, INC.

and

OPERATING ENGINEERS LOCAL 181

ADDENDUM

SUBSTANCE ABUSE TESTING PROGRAM

I. POLICY STATEMENT. All signatory Employers to this Agreement and the Union have a commitment to protect people and property, and to provide a safe working environment. The purpose of the following program is to establish and maintain a drug free, alcohol free, safe, healthy work environment for all of its employees covered by this Agreement.

II. DEFINITIONS.

a. Accident – Any event resulting in injury to a person or property to which an employee contributed as a direct or indirect cause.

b. Accredited Laboratory – A laboratory certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) for testing of Prohibitive Items & Substances.

c. Adulteration – To degrade a test sample by substitution or addition of other ingredients in an effort to mask the presence of unauthorized drugs. An adulterated test shall be considered a positive test.

d. Diluted Sample – Urine samples which the laboratory reports as unacceptable with regards to measured levels of creatinine or specific gravity will be considered diluted samples. The employee shall be required to provide another urine sample for testing.

e. Employees – All individuals who are covered by this Agreement, provided that individuals referred for employment by the Union under the hiring provisions of the Agreement are considered "Applicants" until they are hired and put to work by the Employer.

f. "5-panel US DOT" Approved Test – Describes a laboratory test conducted by SAMHSA certified laboratory for the presence of one or more of the five drugs or classes of drugs described under the definition of "prohibited items and/or substances" and listed in Section IV.1.b. of the ICI SAT Program.

g. Incident – An event which has all the attributes of an accident, except that no harm was caused to person or property.

h. "Medical Review Officer (MRO)" – The MRO is a licensed physician who has knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate positive substance abuse test results together with the individual's medical history and any other relevant biomedical information. The MRO is the individual responsible for receiving laboratory results.

ADDENDUM

i. Not Suitable for Testing – A urine sample that the Medical Review Officer (MRO) determines as not meeting the requirements for a valid test. After consultation with the employee, a retest may be required.

j. Premises – All construction job sites for which the Employer has responsibility. This includes all job areas, offices, facilities, land, building, structures, and all company vehicles used in the performance of covered work.

k. Probable Cause – Probable cause shall be defined as observable abnormal or erratic behavior such as noticeable imbalance, incoherence, and disorientation.

l. Prohibited Items and/or Substances – Prohibited substances include illegal drugs (including controlled substances, look alike drugs and designer drugs), prescription drugs used by one for whom they were not prescribed, drug paraphernalia in the personal possession of or being used by an employee on the premises. Also prohibited is alcoholic beverages being consumed by an employee on the premises.

m. Random Test – An unannounced test pursuant to an objective method for selection. Cost of such testing will be paid for by the Indiana Constructors, Inc. Substance Abuse Testing Program (ICI SAT Program).

n. Rehabilitation Program – An Employer approved confidential counseling service, designed to help employees resolve problems that involve alcohol or drug abuse, staffed by certified and credentialed human services professionals.

o. Reinstatement – Refers to the requirements that a person who tested positive for prohibited items and/or substances under the ICI SAT Program must satisfy before he is eligible to return to work.

p. Retest – A second separate test necessitated by an adulterated or intentionally diluted sample or a test considered not suitable for testing. A retest that is considered as an adulterated or a diluted sample (whether diluted intentionally or unintentionally), or as a test not suitable for testing shall be considered a positive test. Costs of retesting necessitated by an unintentionally diluted and/or a test considered not suitable for testing will be paid for by the ICI SAT Program. Costs of retesting an adulterated or intentionally diluted sample will be paid for by the individual.

q. Substance Abuse Professional (SAP) – A SAP is a licensed physician or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of disorders relating to alcohol and drug abuse.

r. Test – Is defined as the collection of an individual's urine specimen and the subsequent 5-panel US DOT analysis of that specimen, in accordance with federal standards. For alcohol, a test is defined as the collection and analysis of an individual's breath specimen in accordance with federal standards; most often a specimen analyzed by a breathalyzer listed on the US DOT's Conforming Products List.

III. CONFIDENTIALITY.

a. All parties to this program should encourage any employee with a substance abuse problem to accept assistance in dealing with the problem. All parties will take the necessary actions to assure the problem is handled in a confidential manner.

b. When a test is required, the specimen will be identified by a code number associated with a Chain of Custody Form to insure confidentiality of the employee. The employee must witness this procedure.

c. Results will be reported to the Employer and the Union by the MRO.

IV. RULES – DISCIPLINARY ACTIONS – GREIVANCE PROCEDURES

1. RULES – All employees must report to work in a physical condition that will enable them to perform their jobs in a safe and efficient manner. Employees shall not:

a. Use, possess, dispense or receive prohibited substances on or at a job site, or during working hours.

b. Report to work with above the measurable amount of the following prohibited substances in their system.

DRUG OR METABOLITE DETECTED	INITIAL TEST	CONFIRMATION TEST (GC/MS)
Amphetamine (includes Methamphetamine)	1,000 ng/ml	500 ng/ml
Cannabinoid (Marijuana, Hashish)	50 ng/ml	15 ng/ml
Cocaine	300 ng/ml	150 ng/ml
Opiate: Morphine, Codeine	2,000 ng/ml	2,000 ng/ml
Phencyclidine (PCP)	25 ng/ml	25 ng/ml
Ethanol (Alcohol)	.04% w/vol (enzyme assay)	.04% w/vol (GC/FD)

ADDENDUM

New drugs may be added as they are determined to be illegal or considered to be prohibited items and/or substances by mutual agreement.

2. Discipline – When the Employer has probable cause to believe an employee is under the influence of a prohibited substance, for reason of safety, the employee may be suspended until test results are available. If no test results are received after three (3) working days, the employee, if available shall be returned to work with back pay subject to the test results.

If the test results prove negative, the employee shall be returned to work with back pay. In all other cases:

a. Applicants testing positive for drug use will not be hired.

b. Employees who refuse to cooperate with testing procedures will be subject to immediate termination. If an individual does not provide a suitable specimen within two hours (2 hours), it will be considered a refusal and treated as a positive test result and the individual will be subject to immediate termination.

c. Employees found to be in the possession of prohibited items and/or substances will be terminated.

d. Employees found selling or distributing prohibited items and/or substances will be terminated.

e. Employees who test above the measured amount of prohibited items and/or substances as provided for in IV.1.b. while on duty, or while operating a company vehicle, will be subject to termination.

f. First Positive Test Result: The provisions below apply to an employee who is tested pursuant to this policy and who receives a positive test result.

1) Consequences for First Positive Test Result: The employee is subject to immediate termination, upon notice to the Employer by the MRO, of the positive test result.

2) Reinstatement: Employee is not eligible for work until he has taken, at his own expense, a "5-panel US DOT" approved test, at an approved clinic and the results of this test have been analyzed by a SAMHSA certified laboratory and the test results must have been reviewed by an MRO and certified as being negative for the prohibited items and/or substances listed in IV.1.b. and the ICI SAT Program, Union and Employer have received the certified negative test results.

3) Sporadic Testing of Reinstated Employees: A reinstated employee, who has previously tested positive, is subject to unscheduled sporadic testing for one year from the date of reinstatement. Cost of such testing will be paid for by the ICI SAT Program.

g. Second Positive Test Result: The provisions below apply to an employee who has previously tested positive, and tests positive a second time pursuant to such random testing, sporadic testing or any other testing under this policy:

1) Consequence for Second Positive Test Result: The employee is subject to immediate termination, upon notice to the Employer by the MRO, of the positive test result.

2) Reinstatement: Employee is not eligible for work until he has, at his own expense, been evaluated by an accredited SAP, successfully completed an SAP recommended rehabilitation program and the SAP has written a letter releasing the person to return to work and the ICI SAT Program, Union and Employer have received the results of a "5-panel US DOT" approved test, a copy of the letter written by the SAP and a copy of the rehabilitation program successful completion letter, taken at an approved clinic, analyzed by a SAMHSA certified laboratory and the test results must have been reviewed by a MRO and certified as being negative for the prohibited items and/or substances listed in IV.1.b.

3) Sporadic Testing of Reinstated Employees: A reinstated employee, who has previously tested positive, is subject to unscheduled sporadic testing for one year from the date of reinstatement. Cost of such testing will be paid for by the ICI SAT Program.

h. Third and Additional Positive Test Results: The provisions below apply to an employee, who tests positive three or more times pursuant to such random testing, sporadic testing or any other testing under this policy:

1) Consequence for Third and Additional Positive Test Results: The employee is subject to immediate termination upon notice to the Employer by the MRO, of the positive test result and he will not be eligible for reinstatement for a period of six (6) months from date of the positive test.

2) Reinstatement. Employee is not eligible for work until he has, at his own expense, been evaluated by an accredited SAP, successfully completed a SAP recommended rehabilitation program and the SAP has written a letter releasing the person to return to work and the ICI SAT Program, the Union and Employer have received the results of the "5-panel US DOT" approved

test, taken at an approved clinic, analyzed by a SAMHSA certified laboratory and the test results must have been reviewed by a MRO and certified as being negative for the prohibited items and/or substances listed in IV.1.b.

3) Sporadic Testing: A reinstated employee, who has previously tested positive three (3) or more times, is subject to unscheduled sporadic testing for two (2) years from the date of reinstatement. Cost of such testing will be paid for by the ICI SAT Program.

3. Prescription Drugs – Employees using a prescribed medication which may impair the performance of job duties, either mental or motor functions, must immediately inform their supervisor of such prescription drug use. For the safety of all employees, the Employer will consult with the employee to determine if a reassignment of duties is necessary. If a reassignment is not possible, the employee will be relieved of duties until released as fit for duty by the prescribing physician, at which time the employee shall be reinstated to his former employment status if work for which he is qualified is available at that time.

   If the employee is tested and the test is positive, and the employee has not previously informed the Employer of the use of prescription drugs, the employee may be suspended for two weeks and is subject to unscheduled sporadic testing for six months.

4. Grievance – All aspects of this program shall be subject to the grievance procedure spelled out in the Collective Bargaining Agreement.

V. **DRUG/ALCOHOL TESTING.** The parties to this program agree that under certain circumstances the Employer will find that it is necessary for testing to be conducted for prohibited items and/or substances pursuant to the following procedures.

   a. A pre-employment drug and alcohol test may be administered to all Applicants without a valid ICI SAT identification card. The Applicant will be placed on the payroll and put to work pending receipt of the drug and alcohol test. Such employment shall be probationary in the sense that continued employment of the individual shall be contingent upon successful passage of the drug and alcohol test.

   b. All employees shall be subject to random testing.

   c. A test may be administered in the event there is probable cause to believe that the employee has reported to work under the influence of a prohibited item and/or substance, or is or has been under the influence of a prohibited item and/or substance while on the job; or the employee has violated this drug program. During the process of establishing probable cause for testing, the employee has the right to request his on-site steward to be present, if available.

d. Testing may be required if an employee is involved in a work place accident/incident or injury.

e. Employees may also be tested on a voluntary basis.

f. Sporadic testing as provided for in IV.2. may be required as part of a follow-up to counseling or rehabilitation for substance abuse, for up to a two (2)-year period. Each Applicant or Employee to be tested will be required to sign a Consent and Chain of Custody Form, assuring proper documentation and accuracy. If an Applicant or employee refuses to sign a Consent Form authorizing the test, ongoing employment by the Employer will be terminated.

The employee shall be paid for the time lost for the following tests to be conducted, only if the test results are negative, Random, Post Accident, Incident, and Probable Cause.

The Employer will permit the employee who is required to take a drug test to obtain a "split sample," and the employee may request the laboratory to send the "split sample" to an accredited laboratory of his choosing, at his own expense, as described in IV.2. The test result of the split sample must be released to the Employer within a maximum of five (5) working days. If the split sample test result is negative, the employee may be returned to work on the same job site providing work for which he is qualified is still available. Any employee who successfully challenges the accuracy of a positive test result shall be reimbursed for his cost for the second testing and any time loss from work up to a maximum of five (5) work days. If the split sample tests positive, then the employee shall be subject to immediate termination.

Drug and alcohol testing will be conducted by an accredited laboratory, and may consist of either blood or urine tests, or both, as required. Blood tests (for drugs and alcohol) will be utilized for post accident investigation only if a urine or breathalyzer test cannot be administered.

VI. IDENTIFICATION CARD.

a. An ICI SAT identification card will be issued to each person who tests negative in a valid test. The card will contain the Applicant's name, photo and a unique ICI SAT database identification number. The ICI SAT card will be valid until the employee tests positive. The employee shall carry their valid ICI SAT card whenever they are on a job. Failure to produce the ICI SAT card on request by the Employer or their agent may cause the employee to be suspended until the card is presented or until it is verified by the testing agency that the employee's last test was negative. Replacement of a lost or damaged ICI SAT card shall be at the employee's expense.

b. New hires, with an ICI SAT identification card. If an Applicant has a valid employee ICI SAT card, they will present the card for photocopying to the prospective Employer when they present themselves for employment. The Employer shall have the right to further validate the ICI SAT card by contacting the agency responsible for insuring the employee's ICI SAT card is presently valid. The Applicant will be placed on the payroll and put to work pending receipt of the result of the inquiry. Employment shall be probationary and continued employment of the individual shall be contingent upon the validity of the employee's ICI SAT card being verified. The Employer shall have three days to validate the ICI SAT card. If ICI SAT card is invalid, the employee will have no right to continued employment and may be terminated.

c. New hires, without an ICI SAT card. If the Applicant does not have a valid ICI SAT card, employment shall be probationary and continued employment shall be contingent upon successful passage of the drug and alcohol test.

d. When tested for any reason, the employee will surrender the ICI SAT card to the testing agent. If the test is negative, the employee's valid ICI SAT card will be sent to the employee. If the test is positive, the ICI SAT card will not be returned.

VII. REHABILITATION AND EMPLOYEE ASSISTANCE PROGRAM.
Employees are encouraged to seek help for a drug or alcohol problem before it deteriorates into a disciplinary matter. If an employee voluntarily notifies supervision that he may have a substance abuse problem, the Employer may assist in locating a suitable SAP and rehabilitation program for treatment. The Employer will inform the employee that medical benefits may be available under the Health and Welfare Program. For Benefit information if outside Kentucky, call 800-626-7024; within Kentucky call 800-242-7076.

If treatment necessitates time away from work, the Employer may provide for the employee an unpaid leave of absence for purposes of participation in an agreed upon treatment program. An employee who successfully completes a rehabilitation program may be reinstated to his former employment status, if work for which he is qualified is available at that time. Employees returning to work after successfully completing the rehabilitation program will be subject to drug tests without prior notice for a period of one year. A positive test will then result in disciplinary action as previously outlined in this program.

VIII. COST – Except as previously noted the costs of the tests associated with the program will be paid for by the Employer. The cost of a rehabilitation program and consultation with a SAP will be the responsibility of the employee.

ADDENDUM

IX. SUBSTANCE ABUSE TESTING PROGRAM.

a. Each employer agrees to pay to the Indiana Constructors, Inc. Substance Abuse Testing Program ("ICI SAT") three ($.03) cents for each hour worked by each employee working under this Agreement. Each Employer who participates in the ICI SAT Program is strongly encouraged to contribute to the Indiana Constructors Industry Advancement Fund (ICIAF).

b. The contribution to the ICI SAT Program shall be deposited each month, or at regular intervals as may be determined by the Highway, Heavy, and Utility Division – ICA, Inc. to the depository designated by the Highway, Heavy, and Utility Division – ICA, Inc. and such contributions shall be reported on such forms as may be designated by the Highway, Heavy, and Utility Division – ICA, Inc.

c. The activities shall be determined by the Highway, Heavy, and Utility Division – ICA, Inc. and shall be financed from the payments provided for herein. The Employer expressly ratifies and adopts the ICI SAT policy. By execution of this Agreement, the Employer ratifies all actions taken by the Highway, Heavy, and Utility Division – ICA, Inc. within the scope of its authority.

This Substance Abuse Testing Program has been ratified,
signed and sealed as of _____, by the
Negotiating Committee, Highway, Heavy, and Utility Division – ICA, Inc.

5/22/09

5-27-09

This Substance Abuse Testing Program has been ratified, signed and sealed as of
5-28-09, by the International Union of Operating Engineers, Local 181.

ADDENDUM

SUBSTANCE ABUSE TESTING PROGRAM

AUTHORIZATION FOR CONSENT TO DRUG AND ALCOHOL ANALYSIS

AND

AUTHORIZATION FOR RELEASE OF RESULTS

I, the undersigned_____, do hereby authorize the testing of my body fluids and/or breath for employment reasons and understand and agree that the results of any such testing will be turned over to the Employer and further that the testing procedures will be limited to tests for prohibited and illegal drugs and controlled substances and alcohol.

I understand that the results of these tests may be used for employment and disciplinary reasons and hereby authorize the release of such information from the laboratories to the designated Employer.

I further certify that any urine specimen collected from me is mine and not adulterated or altered in any manner.

I have been advised that matters affecting me relative to the interpretation or application of the Drug Policy are subject exclusively to the grievance and arbitration procedure under my Collective Bargaining Agreement.

_____

Signature of Prospective employee/Employee

_____

Witness

_____ _____

Date Time

ADDENDUM

LETTER OF UNDERSTANDING

LETTER OF UNDERSTANDING FOR THE AGREEMENT by and between Highway, Heavy, and Utility Division – ICA, Inc. and Operating Engineers, Local 181 concerning the Substance Abuse Testing Program.

In regard to the Substance Abuse Testing Program, it is understood between the parties that under this program, the following guidelines will be followed when a person tests positive:

First Positive Test
Results in immediate termination.

For Reinstatement:

- Provide a negative "5-panel US DOT" test result as interpreted by a MRO.
- Sporadic testing for one (1) year following reinstatement.

Second Positive Test

- Results in immediate termination.

For Reinstatement:

- Be evaluated by a SAP.
- Complete a SAP-recommended rehabilitation program.
- Secure written release from the SAP to return to work.
- Provide a negative "5-panel US DOT" test result as interpreted by a MRO.
- Sporadic testing for one (1) year following reinstatement.

Third and Additional Positive Test
Results in immediate termination; not eligible for reinstatement for six (6) months.

For Reinstatement:

- Be evaluated by a SAP.
- Complete a SAP-recommended rehabilitation program.
- Secure written release from the SAP to return to work.
- Provide a negative "5-panel US DOT" test result as interpreted by a MRO.
- Sporadic testing for two (2) years following reinstatement.

FURTHER it is understood that any costs associated with the SAP, MRO, Rehabilitation Program, and testing required to be reinstated, are the employee's responsibility.