

K# 9912

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**WEST VIRGINIA  
HEAVY AND HIGHWAY AGREEMENT  
2007 - 2009**

between

**CONSTRUCTORS' LABOR COUNCIL  
OF WEST VIRGINIA, INC.**

and

**LABORERS' DISTRICT COUNCIL  
OF WEST VIRGINIA**

**CONSTRUCTORS' LABOR COUNCIL  
OF WEST VIRGINIA, INC.**

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## **UNION INFORMATION SHEET**

### **BUSINESS MANAGER**

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**W.Va. Laborers' Training Center**

Carl Reynolds, Administrator  
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**HEALTH & WELFARE OFFICE**

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## **WEST VIRGINIA HEAVY AND HIGHWAY AGREEMENT**

**THIS AGREEMENT**, made and entered into this 1<sup>st</sup> day of December, 2006, by and between the undersigned **THE CONSTRUCTORS' LABOR COUNCIL OF WEST VIRGINIA, INC.** representing the members thereof doing business in all Counties within the State of West Virginia, (hereafter referred to as "Employer Association") and the undersigned **LABORERS' DISTRICT COUNCIL OF WEST VIRGINIA**, on behalf of Local Unions 379, 453, 543, 984, 1085, 1149 and 1353, (hereinafter referred to as "Union") to cover all Heavy and Highway construction work performed by the aforesaid Contractors in all Counties within the State of West Virginia;

**WHEREAS**, the parties desire to stabilize employment, promote harmonious relationships and provide a medium whereby Employers and Unions cooperate each with the other; and

**WHEREAS**, the Constructors' Labor Council of West Virginia, Inc. hereby recognizes and acknowledges that the Union signatory hereto is the exclusive representatives of all Employees in the classifications of work covered by this Agreement for the purpose of collective bargaining, as provided by the Labor Management Relations Act of 1947 as amended; and the Union recognizes Constructors' Labor Council of West Virginia, Inc. as the duly authorized bargaining agent for its members;

**NOW THEREFORE**, Constructors' Labor Council of West Virginia, Inc. and the Union, acting by their duly authorized agents, agree as follows:

### **ARTICLE I Definitions**

**Section 1.** "Contractor" or "Employer" when used in this Agreement means any Contractor or Employer engaged in all heavy and highway construction work in all counties in the State of West Virginia.

**Section 2.** The word "Work" when used herein means all types of heavy and highway construction work and "Heavy, Highway and Railroad Construction" work.

**Section 3.** Heavy Construction and Railroad Construction is defined as all heavy and railroad construction work in all Counties within the State of West Virginia, which includes, but

is not limited to, constructing, substantially in its entirety, any fixed structures, improvement or modification thereof, addition or repair thereto, including any structure or operation which is an incidental part of a contract thereof including, without limitation, railroad and street railway construction projects, sewers and water mains, retaining walls, viaducts, drainage projects, flood control projects, reclamation projects airports, athletic fields, ball parks reservoirs, water supply projects, water power developments, hydroelectric developments, transmission lines, duct lines, pipelines, locks, dams, dikes, levees, revetments, channels, channel cutoff, intakes, dredging projects, jetties, breakwaters, docks, harbors, roads, bridges, parking buildings, parking lots, sidewalks, river work, industrial plant sites work, sewage disposal plants, water treatment plants, excavation and disposal of earth and rock, clearing, grading and drainage of sites, work on building project to the foundation of the building, wind towers, communication towers, hazardous and toxic waste removal, abandon mine reclamation, landfills, containment facilities, brown field reclamation projects, asbestos removal. demolition work, nuclear and electromagnetic power reactors, bridges and including the erection, dismantling, operation, maintenance and repair of all equipment, vehicles and other facilities used in connection with or serving the aforementioned work.

**Section 4.** Highway Construction is defined as all highway construction work performed in all Counties within the State of West Virginia, which includes highway tunnels, highway and street grading, paving and drainage, culverts manholes, water and other utility pipelines (when included in the contract), retaining walls, underpasses and overpasses (when included in a highway contract), highway viaducts, cloverleaf structures, curbs and sidewalks, seeding and landscaping, clearing (when included in the contract), guardrails and fences, and the erection, dismantling, operation, maintenance and repair of all equipment, vehicles and other facilities used in connection with or serving the aforementioned work.

**Section 5.** The term "workday" when used herein means a completed eight (8) hour shift.

**Section 6.** The term "owner-operator" when used herein includes a person or persons who own their own pieces of equipment and hire out said equipment to the Contractor for the performance of bargaining unit work herein. The term driver of leased equipment includes an "owner-operator" and a driver of

equipment owned by another person who hires out or leases one or more pieces of equipment to the Contractor for the purpose of performance of bargaining unit work herein.

**Section 7.** The term "Union" when used herein is the undersigned LABORERS' DISTRICT COUNCIL OF WEST VIRGINIA, on behalf of Local Unions 379, 453, 543, 984, 1085, 1149 and 1353.-

**Section 8.** A "make-up day" when used herein is a workday that results from the cancellation of work due to inclement weather.

**Section 9.** The term "temporary work" when used herein is work performed on a project in which the Employee works less than thirty-one (31) hours during the duration of the project.

## **ARTICLE II**

### **Union Security**

**Section 1: Union Membership.** All present Employees, within the meaning of this Agreement, who are members of the Union on the effective date of this Agreement shall, as a condition of employment, maintain their membership in the Union. All present Employees who are not members of the Union and all Employees who are hired hereafter shall become and remain members of the appropriate Union as a condition of employment not later than the eighth (8th) day following the beginning of their employment or the effective date of this Agreement, whichever is the later. Failure of any Employee to comply with the provisions of this Article shall, upon the request of the Union, result in the termination of such Employee. Upon written request, the Employer shall furnish a designated Union official on each job with the names of any new Employees not later than eight (8) days after employment upon forms to be supplied by the Union. The Employer shall not justify the discrimination against any Employee for non-membership in the Union (a) if he has reasonable grounds for believing that such membership was not available to the Employee on the same terms and conditions generally applicable to other members, or (b) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the Employee to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.

Employer agrees to check off Union dues and initiation fees, and turn the same over to the proper Union officials upon presentation

of proper authorization cards supplied by the Union and signed by the Employee, in conformity with the Labor Management Relations Act of 1947 as amended. The Employer shall not be held liable for, and the Union agrees that it will indemnify and hold harmless the Employer from any claims arising from disputes between the Union and its Members concerning dues and initiation fees. Employer, upon written request, will supply the Union with a list of all its Employees' names who are performing its bargained for unit work covered by this agreement.

**Section 2: Minimum wage scale.** The minimum wage scales to be paid by Employer shall be as set out in Article XIII of the Agreement except that such Article may be amended by written mutual consent and agreement. In the event the Davis-Bacon Act is repealed, either party may notify the other party of their intent to renegotiate the wage rates within thirty (30) days following the effective repeal date. If a Union fails to submit the negotiated wage rates to the United States Department of Labor or the West Virginia Department of Labor each year in a timely manner or does not properly prevail its wages, the Union will be required to reopen the contract for the purpose of renegotiating the wage rates. If no new wage rate is established through negotiations, the Employer is responsible for payment of the wage rate prevailed at the time the contract is let to bid.

**Section 3. Surety Bond.** The Union may require those Employers who have not maintained a presence in the jurisdiction of the Union for five (5) years or more or who are not previously a party to an agreement with the Union or who are delinquent or who become delinquent in payment of fringe benefit funds and who do not cure such delinquency within thirty (30) days provided by this Agreement to procure, pay the premium for and deliver to the Union a Bond written by a responsible surety company in the sum of Twenty-five Thousand Dollars (\$25,000.00) plus any existing delinquencies due said fringe benefit funds guaranteeing the payment of all wages and fringe benefits due Employees under this Agreement and all payments and penalties due as provided in this Agreement.

An Employer desiring to start work before furnishing such Bond shall make a Five Hundred Dollar (\$500.00) cash deposit with the Local Union office. His job may then proceed for a period of thirty (30) days. Thereafter, the Surety Bond must be posted before work may continue. Any such deposit shall be refunded to the Employer upon presentation of the Bond. The above Bond



and cash deposits are for the purpose of securing the payment by the Employer of all payroll and fringe benefits due Employees and shall be refunded to the Employer upon completion of the work, providing that all obligations with respect to payroll and fringe benefits have been paid.

### **ARTICLE III**

#### **General Working Conditions**

**Section 1: Accidents.** Employees shall immediately report to the Employer all accidents, together with the names and addresses of all witnesses to the accidents. Upon written request, Employer shall furnish the Union concerned with a report of each lost time accident involving a member of that Union on a form to be agreed upon.

**Section 2: Street/highway safety.** Employer shall not require Employees to take out on the street or highways any vehicles not equipped with the safety appliances prescribed by law, or any vehicle that is not in a safe operating condition.

**Section 3: Equipment defects.** Employees shall immediately report to the Employer all equipment defects. If an occasion arises that an Employee reports defective equipment to Employer and receives no satisfaction, he shall report the matter to the officers of his Union who shall in turn consult with Employer.

**Section 4: Manning equipment.** Employer shall man his equipment at all times with a sufficient number of men to properly handle the load. There shall be no limit on production by workmen or restrictions on the full use of tools and equipment. There shall be no restrictions other than may be required by safety regulations on the number of men assigned to any crew or to any service except as otherwise provided for in this Agreement.

**Section 5: Safety & sanitary regulations.** Employer shall comply with all of the safety and sanitary regulations specified by the laws of the United States of America and the State of West Virginia. Required safety equipment shall be furnished by the Employer. If after analysis by a recognized testing laboratory, materials used in construction are found to be injurious to health and safety to Employees, the Contractor will correct the situation through reasonable protective measures or substitution of other materials.

**Section 6: Working steward.** The Union may refer a working steward for each shift who will be paid at the journeyman wage rate for the job classification in which he is employed and will be allowed reasonable time to fulfill his responsibilities for the

benefit of the parties to this Agreement. It is understood and agreed that the working steward must be able to productively perform any available work. The working steward shall not be discriminated against for discharging his duties as a steward. The Union shall notify the Employer the name of the working steward on each job. Designated officials of the crafts shall be permitted upon the job site provided that said official complies with safety regulations and does not affect the work in progress. Before the Employer discharges or lays-off a steward, the Employer must discuss the reason for the discharge or layoff with the local union Business Manager, if available.

**Section 7: Foul weather.** Necessary foul weather gear, including over-the-shoe boots, shall be supplied by the Contractor when the weather or type of work requires it and shall be chargeable to the man if lost or damaged beyond ordinary wear and tear. The Employer shall determine if weather is suitable for working. The Employee shall not be punished for refusing to work in unsafe weather conditions.

**Section 8: Management of operations.** The Employer retains and shall exercise full and exclusive responsibility for the management of its operations. The Employer will be the judge in determining the competency of applicants and Employees with the right to hire, reject or terminate accordingly and will be responsible for determining a fair day's work. The Employer may direct the working force, at its sole prerogative, including hiring, selection of general foreman, foreman, promotion, transfer, layoff or discharge of its Employees. No rules, customs or practices shall be permitted or observed which limit or restrict production or limit or restrict the joint or individual working efforts of Employees. Further, the Employer shall be the judge as to the number of Employees, foremen, general foremen and other supervisors required to perform the work, and the number of Employees to be assigned to any crew, operation or piece of equipment. Employees may be shifted from one piece of equipment or operation to another as job conditions require. General foremen, master mechanics, foremen and other supervisors may operate any equipment or use the tools of the craft when instructed to do so by the Employer for instructional or emergency purposes. The fact that certain classifications and rates are established does not mean that the Contractor must employ workmen for any one or on such classifications or to man any particular piece of equipment that happens to be on the job unless the Contractor has need for such

equipment. General foremen and foremen who have been in the employ of the Employer for one year or more, may be transferred from project to project. The Employer shall have the unqualified right to select and hire directly all supervisors it considers necessary and desirable without such persons being referred by the Unions. The Employer may utilize any method or technique of construction and there shall be no limitation or restriction, regardless of the source or location, of the use of machinery, precast, prefabricated or preassembled materials, tools, or other laborsaving devices, nor shall there be any limitation upon choice of materials or design.

The Employer shall assign work on the basis of traditional work jurisdictional lines. It is, however, recognized that effective competition requires the use of partnering crew or a cadre approach among respective crafts. Based upon past practices in West Virginia and area custom, a partnering crew or a cadre may be utilized. The partnering crew or cadre is a crew comprised by the Employer at its discretion. The Employer is not required to utilize individuals of each union signatory to this agreement nor individuals of each union present on the construction site in establishing the partnering crew or cadre. The Employer will make up the crew on the basis of the amount of work involved for each Union. Only on projects with gross contract value greater than \$3,000,000 will pre-bid approval be required for use of partnering crews or cadres.

**Section 9: Union workforce.** The Union will exert its utmost efforts to recruit sufficient numbers of skilled applicants to fulfill the workforce requirements of the Employer. In the event the referral facilities maintained by the Union does not refer the required number of qualified applicants requested by the Employer within a twenty-four (24) hour period after such request is made (Saturdays, Sundays and holidays excepted), the Employer may withdraw the request and employ applicants from other sources.

The Employer has executed a hiring hall agreement with the Union that is attached hereto and made apart hereof by reference and are available at the Constructors' Labor Council of West Virginia, Inc. upon request.

**Section 10: Work place.** Employees shall be at their work place at the starting time, and shall remain at their place of work performing their assigned duties under supervision of the Employer and shall be returned to their vehicle by quitting time. The Employer shall have the right to determine the work place.

There will be no organized coffee breaks, rest periods or other non-working time established during working hours. Employees will be afforded coffee breaks at their work place provided that the coffee break does not disrupt job progress. It is agreed and understood that coffee breaks, rest periods or other non-working time will not create a general work stoppage. It is agreed and is the intent of the parties that there be a full day's work for a fair day's wage. When working a ten (10) hour shift, Employees shall receive a ten (10) minute unorganized break at their workstation. The break shall be coordinated by the Contractor so not to impede or impact project operations.

**Section 11: Ice water.** The Contractor will make every reasonable effort to provide ice water.

**Section 12: Notice of work status.** Each Employee shall furnish the Employer with a phone number or a point of contact where said Employee may be reached for notice of work status. Employer agrees to not unreasonably withhold "lay-off slips" or "low earnings slips" if same is requested by an Employee.

**Section 13: Saturday work.** In the event Saturday is to be worked, notification must be given the Crafts prior to the completion of the Friday daylight shift.

**Section 14: Leave of absence.** If an Employee is injured and forced to leave the job, he shall be given a reasonable time to gather his personal belongings and tools. Employer agrees to grant the necessary leave of absence without pay in case of sickness or injury, and Employee shall receive his former position, if available, upon recovery or the expiration of the leave.

**Section 15: On the job injury.** If an Employee is injured on the job, it is the responsibility of the Employer to provide first aid and transportation of the Employee to the nearest hospital or physician. Upon admittance to the hospital by a physician, responsibility of the Employer terminates and the Employee is under the supervision and jurisdiction of the physician and the Workers' Compensation Program for treatment and reassignment to duty status. If the Employee is allowed to return to work by the physician, and if the Employee should require further examination or treatment during duty hours, then the Employer shall pay the Employee for such portion of the work day that he is not on the job, provided that the Employee may be requested to furnish adequate proof of his attendance for medical treatment. The Employer shall not be responsible for payment to the man for

any time devoted to such examination or treatment before or after the normal workday.

**Section 16: Trial period.** New Employees shall be on trial for a period of fifteen (15) workdays and Employer shall be the sole judge of their ability during such trial period. Employees retained after such fifteen (15) workday trial period shall be deemed to be regular Employees. The Employer shall not discharge any Employee working more than fifteen (15) workdays without just cause. In the event of termination, any Employee working more than fifteen (15) workdays may, within five (5) workdays of his termination, make a written request for an investigation as to his discharge. Should such investigation prove that an injustice has been done, the Employee shall be reinstated and compensated at his usual rate of pay while he has been out of work. If an Employee goes sixty (60) days without working for an Employer, the Trial period begins again upon reemployment with that Employer.

#### **ARTICLE IV**

#### **Wages and Work Periods**

**Section 1: Start time.** (a) Starting time of regularly scheduled shift shall be established by the Contractor between the hours of 6 a.m. and 8 a.m. or as agreed upon at the pre-job conference. A Contractor may elect to change the starting time, but must give the Union twenty-four (24) hours notification in advance. Notice shall be effective if orally given to the steward or confirmed in writing to the respective business agent. It is understood that the Contractor is not required to pay travel expenses, travel time, zone pay or subsistence during the term of this Agreement.

(b) It is recognized and agreed that on certain types of work due to owners' specifications, Governmental restrictions and/or traffic conditions, the work or part of the work must be done on multiple shift basis in which event such shift will be permitted to conform with such restrictions as to starting time or time between shifts, which may be determined at the pre-job conference.

(c) On highway projects only, when Employees are required to work away from their home base of operation on temporary work, room, board and transportation shall be provided by the Employer. When Employees are required to work away from their home base of operation on a regular job, they shall provide their own room and board. On highway projects only, the Employee shall be paid for no less than eight (8) hours or his regular shift hours for each day of temporary work, whichever is greater, and payment for all

other time required in the service of Employer. On temporary work on highway projects only, in the event of inclement weather, the Employee will receive two (2) hours pay for reporting time or actual hours worked, whichever is greater.

**Section 2: Workweek.** Except where provided otherwise by the United States Government, forty (40) hours shall constitute a normal workweek and all hours worked over forty (40) per week shall be paid for at the rate of time and one-half (1-1/2). On Heavy construction projects with gross contract value greater than \$3,000,000.00, the Employee shall be paid at the rate of time and one-half (1-1/2) for hours worked over eight (8) hours on eight (8) hour shifts or at the rate of time and one-half (1-1/2) for hours worked over ten (10) hours on ten (10) hour shifts. Nothing herein shall be construed as guaranteeing any Employee eight (8) hours of work per day on eight (8) hour shifts or ten (10) hours of work per day on ten (10) hour shifts or forty (40) hours of work per week. All productive work performed on Sunday shall be computed on a double time basis, and not less than four (4) consecutive hours of work shall be given on Sunday. See "Triple Shift Exception" - Section 3.

It is understood that the Employer is not required to pay travel expenses, travel time, zone pay, or subsistence during the term of this Agreement.

Saturday will be considered the make-up day on eight (8) hour shifts and will be paid straight time if the Employee has not worked a forty (40) hour week prior to Saturday. Saturday will be a make-up day for work missed due to inclement weather, not holidays. Friday will be considered the make-up day on ten (10) hour shifts and will be paid straight time if the Employee has not worked a forty (40) hour week prior to Friday. Friday will be a make-up day for work missed due to inclement weather, not holidays. If the Employee provides the Employer with written notice twenty-four (24) hours prior to a make-up day that he does not want to work the make-up day, then the Employee will not be penalized for not working the make-up day. On heavy projects with gross contract value of greater than \$3,000,000.00 only, all construction work performed on Saturday will be paid at time and one-half unless Saturday is considered a make-up day.

It is agreed and understood that Employees performing non-productive work such as curing concrete and de-watering will be paid straight time regardless of the day non-productive work is performed.

The Employer and the Union agree that chronic and/or unexcused absenteeism is undesirable and must be controlled. The Employer may terminate, at its discretion, for chronic and/or unexcused absenteeism. The Employer shall be consistent with regard to termination for absenteeism.

**Section 3: Triple shift.** (a) When three shifts are established and operated, the first or daylight shift will consist of eight (8) hours work, plus one-half (1/2) hour for non-paid lunch. The second shift will consist of seven and one-half (7-1/2) hours work, plus one-half (1/2) hour for non-paid lunch. For the second shift, the Employee will receive eight (8) hours pay for (7-1/2) hours work. The third shift will consist of seven (7) hours work, plus one-half (1/2) hour for non-paid lunch. For the third shift, the Employee will receive eight (8) hours pay for (7) hours work.

(b) On triple shift operations, the normal workweek shall begin with the first shift Monday morning. All work performed between the beginning of the first shift Friday until the last shift Saturday shall be considered as worked on Friday and paid at the applicable rate for that day. All work performed between the beginning of the first shift Sunday until the beginning of the first shift on Monday, shall be considered as worked on Sunday and paid at the applicable rate for that day.

**Section 4: 8 or 10-hour shifts.** When two 8 or 10-hour shifts are established and operated, a one-half (1/2) hour free lunch period will be provided. Therefore, Employees will be on the project site for 8-1/2 hours or 10-1/2 hours, but will be paid only for 8 or 10 hours. In the event of the utilization by the Contractor of three shifts, the language provided in Section 3, Paragraph (a) of this Article will prevail.

**Section 5: Overtime.** The Employer shall determine when overtime shall be worked and by whom. Where Employees are required to work overtime beyond the normal shift, the first period shall consist of two (2) hours work, plus one-half (1/2) hour free lunch time and subsequent periods shall consist of three and one-half (3-1/2) hours work plus one-half (1/2) hour paid lunch time. If the Employee is required to work during any lunchtime, he shall be paid therefore. The Contractor shall make every reasonable effort to provide some type of food during the second or third lunch periods.

**Section 6: Show-up time.** An Employee who reports for work at the regular starting time and for whom no work is provided shall receive pay equivalent to one (1) hour at the applicable

hourly rate. The Employee must report to the Project at the regular starting time and remain available for work during the period compensated to be eligible to receive reporting pay. An Employee who is put to work shall be paid for actual hours worked but not less than two (2) hours. On Heavy construction projects with a gross contract value of \$3,000,000.00 or more, an Employee who is put to work shall be paid for actual hours worked but not less than four (4) hours at the applicable hourly rate on eight (8) hour shifts and five (5) hours at the applicable hourly rate on ten (10) hour shifts.

**Section 7: Weekly pay.** Employees are to be paid weekly. The workweek shall begin with the daylight shift Monday and payment of wages shall be made no later than Friday of the following workweek. The Contractor and the Union shall mutually agree upon the day on which the Employees shall be paid. Employees who report for their paycheck on a day when there is no work scheduled because of weather or other causes shall not be eligible for reporting pay. All paychecks will be available at the start of the day shift on the established payday. The Employee may ask the Contractor to mail his check to his home on a non-work payday and the Contractor will mail said check prior to 12:00 noon on said day.

**Section 8: Lunch Period.** The Lunch period will be routinely held between 11:00 a.m. and 1:00 p.m. unless mutually agreed upon otherwise at the pre-job conference. Contractors shall make every reasonable effort to provide a warm place for Employees to eat lunch on projects with a gross contract value of \$3,000,000.00 or more.

**Section 9: Termination/lay-offs.** An Employee whose employment is terminated or who is laid-off for the "convenience of the Employer" shall be paid within one (1) hour of the time of termination or at the end of the shift, whichever is first, unless extraordinary circumstances prevent the timely preparation of a final check. Absent extraordinary circumstances, the Employee shall be paid at the straight time rate if he is required to wait beyond such period. However, in no event shall the Employee be paid for more than eight (8) hours per day that he is required to wait. An Employee whose work is terminated shall be given sufficient time in which to gather his personal belongings and tools.

**Section 10: West Virginia Heavy and Highway Construction Industry Fund.** Contractors, both signatory and non-signatory members of the Constructors' Labor Council of West Virginia,



**Section 3: Subcontractors.** The Contractor, using its own discretion, may subcontract, assign or transfer portions of the work covered hereby to other subcontractors, persons or entities. Contractor and subcontractors, persons or entities who are signatory to this agreement agree that they will not subcontract, assign, or transfer any portion of their work to any subcontractor, person or entity who is not a party to this bona fide collective bargaining agreement with the exception of specialty work or where such subcontractors, persons or entities, are not competitive or available in the area or where contrary to law. The furnishing of materials, supplies or equipment and the delivery thereof shall not in any case be considered as subcontracting. It is understood and agreed that all Contractors, subcontractors, persons or entities who are signatory to this agreement shall be solely liable and responsible for their breaches of this agreement and other acts and omissions. Further, it is agreed and understood that all such Contractors, subcontractors, persons or entities shall indemnify and hold harmless those with whom they are in contract for any such breaches, acts or omissions.

Prior to subcontracting with non-signatory subcontractors, the Employer will attempt to make reasonable efforts to contact the Union in a timely manner to provide the Union with an opportunity to solicit Union subcontractors.

**Section 4: Owner-operator.** The performance of bargaining unit work defined by the scope of this Agreement for the Contractor by an owner-operator or operator of leased equipment shall be governed by the provisions of this Agreement. It is understood and agreed that this Section does not apply to the first point of delivery.

**Section 5: Trust Funds.** It is agreed and understood that the Constructors' Labor Council of West Virginia, Inc., may have a representative on any and all trust funds into which its members are required to pay. As long as the Constructors' Labor Council of West Virginia, Inc. has a Contractor representative on each trust, it is agreed and understood that the provisions of the trust documents are incorporated herein by reference.

## **ARTICLE VII**

### **Work Stoppages and Lockouts**

**Section 1: Work interruptions prohibited.** During the term of this Agreement, there shall not be, and the Union shall not sanction, strikes, sympathy strikes, picketing, work stoppages,

work interruption, slow downs, sick-outs, other disruptive activities, including, but not limited to destruction of equipment, for any reason by the Union or by the Employee, except for non-payment of wages and fringe benefits when due, and there shall be no lockout by the Contractor. The work shall continue uninterrupted as assigned by the Contractor.

**Section 2: Union shall not sanction work interruptions.** The Union shall not sanction, aid or abet, encourage or continue any strikes, sympathy strikes, picketing, work stoppages, work interruption, slow downs, sick-outs, other disruptive activities, including, but not limited to destruction of equipment, at any Contractor's site and shall undertake all reasonable means to prevent or to terminate any such activity. No Employee shall engage in activities that violate this Article. Any Employee who participates in or encourages any activities that interfere with the normal operation of the project shall be subject to disciplinary action, including discharge. In the event such practices are committed or such strikes, sympathy strikes, picketing, work stoppages, work interruption, slow downs, sick-outs, other disruptive activities, including, but not limited to destruction of equipment, occur, the Union and any other person or entity committing, aiding or abetting such practices shall be liable to the affected Contractor for all actual damages suffered, but such damages shall in no event be less than \$10,000.00 per day, which amount is an agreed minimum liquidated damage and not a penalty. It is further agreed that in addition to actual or liquidated damages, the affected Contractor shall be entitled to consequential and incidental damages as well as all associated costs including attorney's fees. The Union shall not be liable for acts of Employees for which it has no responsibility. The failure of the Employer to exercise its rights in any instance shall not be deemed a waiver of its rights in any other instance.

## **ARTICLE VIII**

### **Grievances and Arbitration for disputes between Union and Contractor/Employer and/or disputes between Unions**

**Section 1: Grievances, disputes and claims.** All grievances, disputes or claims which may arise with respect to wages, hours or conditions of employment or the enforcement or interpretation of any of the terms of this Agreement between the Union and the Employer/Contractor and/or between Unions are to be promptly processed and settled in accordance with the provisions of this Article.

Should any such dispute arise which cannot be adjusted between the Contractor involved and the Union, it shall be taken up between the Union and the Constructors' Labor Council of West Virginia, Inc. The aggrieved party shall comply with the procedures set forth in the Article.

**Section 2: Jurisdictional Disputes.** It is understood and agreed that any dispute over assignment of work shall be conducted as follows:

If the Contractor and the Union are unable to agree upon the assignment of work, either at the pre-job conference or during the construction project, and a dispute shall arise between two (2) or more Unions as to which Craft the work properly belongs, the Contractor shall utilize its best discretion in assigning the work and work shall proceed as so assigned until such time as the dispute is settled. The Local Union Business Managers of the disputing Unions shall meet within forty-eight (48) hours of the dispute to discuss resolution. If the Business Managers are unable to resolve the dispute, the aggrieved party shall file a grievance in accordance with the provision of Section 4 of this Article. If no grievance is filed within seventy-two (72) hours, after the business managers meeting, unless extended by mutual agreement of the Union and the Contractor, the dispute shall be forever barred. The Contractor shall not be held liable or responsible to any Union for its assignment of disputed work.

**Section 3: Discharge.** It is understood and agreed that any dispute over discharge shall be conducted as follows:

Employees who have worked fifteen (15) workdays or less are not entitled to the provisions of this Article. The Employee's local representative must request, in writing, within forty-eight (48) hours of the discharge, a meeting with the Contractor to discuss the discharge or the dispute shall be forever barred. If the Business Manager and the Contractor are unable to resolve the dispute, the aggrieved party shall file a grievance within seventy-two (72) hours after the Business Manager and Contractor's meeting in accordance with the provision of Section 4 of this Article. If no grievance is filed within the seventy-two (72) hours after the Business Manager and Contractor's meeting, unless extended by mutual agreement, the dispute shall be forever barred.

**Section 4: Filing grievance, meeting & arbitration.** Any complaint or grievance shall be presented, in writing, signed by the grievant's representative and approved by the grievant, to the Constructors' Labor Council of West Virginia, Inc., within ten

(10) calendar days of the event giving rise to the complaint or grievance or such complaint or grievance shall be forever barred. Time periods set forth in Sections 2 and 3 of this Article shall govern for jurisdictional and discharge disputes. If a grievance is properly and timely filed, then the provisions of this Section govern the grievance process. If such complaint or grievance is timely filed, the Constructors' Labor Council of West Virginia, Inc. will schedule a meeting between the affected parties to attempt resolution of the matter. In the event the complaint or grievance is not resolved informally through the Constructors' Labor Council of West Virginia, Inc. the aggrieved party may refer the matter to arbitration. It is understood and agreed that any such matters shall be filed with the Federal Mediation and Conciliation Service (hereinafter referred to as "FMCS") unless agreed upon in writing otherwise. The demand for arbitration shall be filed in writing with the other party and with FMCS within ten (10) calendar days of the meeting with the Constructors' Labor Council of West Virginia, Inc., but in no event later than thirty (30) calendar days from the date of the event giving rise to the complaint or grievance. The decision of arbitration shall be final and binding on the parties hereto. If no written demand for arbitration is filed with the other party and with FMCS within the time and manner prescribed, unless longer times are mutually agreed upon in writing, the grievance shall be forever barred.

## **ARTICLE IX**

### **Responsibility of Parties**

**Section 1: Negotiating representatives.** The parties hereto agree that Constructors' Labor Council of West Virginia, Inc. is acting only as the negotiating representative for its subscribing members and that it shall not be liable as a corporate entity for any violation of this Agreement by any of its subscribing members. Constructors' Labor Council of West Virginia, Inc. certifies that it is authorized by its membership to execute this Agreement on their behalf.

**Section 2: Several, not joint liability.** Union agrees that the breach or violation of this Agreement by any one or more members of the Constructors' Labor Council of West Virginia, Inc., shall not be treated by them as cause for calling a strike, work interruption, sympathy strike, picketing or sick-outs against any member, including members not in violation. Union further agrees that the members of the Constructors' Labor Council of

West Virginia, Inc. shall be severally, and not jointly, liable for any breach or violation of this Agreement. The Constructors' Labor Council of West Virginia, Inc. agrees that the members of the Union signatory hereto shall be severally, and not jointly, liable for any breach or violation of this Agreement.

**Section 3: Agreements with non-signatory members.** Union shall furnish Constructors' Labor Council of West Virginia, Inc. with a copy of any agreement between the Union and any Contractor or Contractors not a member of Constructors' Labor Council of West Virginia, Inc., wherein such Contractor agrees to work under the terms and/or conditions set forth in this Agreement. Constructors' Labor Council of West Virginia, Inc. shall furnish the Union, upon the Union's written request, with a list of Constructors' Labor Council of West Virginia, Inc.'s members; the list shall include all members with whom Constructors' Labor Council of West Virginia, Inc. is signature, whether signatory to this agreement or any other agreement.

**Section 4: Conflicts of law.** In the event any provisions of this Agreement are held to be in conflict with any state or federal law applicable hereto, the parties shall not be bound by the provisions affected by such law, but all other provisions of this Agreement shall continue in full force and effect.

## **ARTICLE X Termination**

**Section 1: Agreement Effective dates.** This Agreement shall remain in full force and effect from December 1, 2006 to and including November 30, 2009 and thereafter from year to year unless either party gives written notice to the other party of its intention to terminate this Agreement at least sixty (60) days prior to the expiration of any contract year.

**Section 2: Negotiations.** Negotiations for a contract for the year 2010 shall be commenced on or before September 30, 2009.

## **ARTICLE XI Miscellaneous**

**Section 1: Drug-free workplace.** The Employer reserves the right to require a Drug-Free Workplace consistent with applicable State and Federal Law. To that end drug-screening is authorized and shall be conducted by the Employer of all personnel employed on all projects within the scope of this Agreement.

**Section 2: Single craft agreement.** It is agreed and understood that Constructors' Labor Council of West Virginia, Inc. is the representative for Employers who are members of the Association. However, all Employers are not required to be bound by each and every collective bargaining agreement entered into by the Employer Association. Constructors' Labor Council of West Virginia, Inc. maintains records to indicate which of its members have chosen to be bound by each agreement.

## **ARTICLE XII**

### **Laborers**

**Section 1: Definitions.** "Laborer" or "Laborers" means a person working for a Contractor in the performance of work within the classification historically and traditionally recognized in the industry as the "building and construction," or "heavy and highway."

**Section 2: Classifications for Laborers.** Classifications for Laborers shall be as follows:

**CLASS I:** Class I shall include the following: Blacksmith, Tunnel Driller, Tunnel Miner and Tunnel Foreman, Laborer Foreman, Mucher Chucker, Reinforcing Bar Handler (structures), Toxic and Hazardous Waste Removal Laborer, Asbestos Abatement Laborer, Lead Based Paint Removal Laborer, Inside Laborer, Powderman, Laser Screed Operator, Cement Finisher, and GPS Operator.

**CLASS II:** Class II shall include the following: Pipe Layer (including laser beam set-up), Form Setter (road), Drill Operator, Air Tool Operator, Grade Checker and Asphalt Raker, Vibrator Man, Whacher, Chainsaw Operator, Mortarman, Mason Tender, Blacksmith Helper, Cement Finisher Helper, Drill Helper, Powderman Helper, Waterproofer, Sheeter and Shorer, Placement of Lagging, Bullfloat Man, Pavement Reinforcing Placer, Handyman, Signal Man, Greencutter, Georgia Power Buggie, Burner, Cement Blower Man, Bituminuous Hand Sprayer, Bork 250 Remote Control Ditch Witch and

Walk Behind Concrete Saw, Deckhand, Mulcher and Seeder (hand or machine), Fence Erector, Installation of Ground Mounted Post Supports and Signs, Installation of Ground Mounted Beams and Signs including Concrete Footers, Installation of Overhead Sign Supports and Signs including Concrete Footers, Installation of Guardrail and Anchor Assemblies, Tree Trimmer, Labor Operating a Bobcat on non-productive work, Labor Operating a Forklift, Casion Bottom Man, Bush Hammering Laborer, Core Drilling Laborer, and Placement and Mixing of Grout Laborer.

**CLASS III:** Class III shall include the following: Flag Person, Watchman, Traffic Control Maintenance Person, Carpenter's Tender, Pipelayer Helper, Herbicide Sprayer and General Laborer.

**Section 3: Heavy and highway wage rates.**

Classes shall be paid the following rates for the years 2007 through and including 2009:

	<b>2007</b>	<b>2008</b>	<b>2009</b>
<b>CLASS I</b>	\$23.60	\$23.85	\$24.35
<b>CLASS II</b>	\$22.57	\$22.82	\$23.32
<b>CLASS III</b>	\$21.51	\$21.76	\$22.26

**B. Apprentice.** In order to maintain a sufficient number of skilled laborers in the industry covered by this Agreement, the necessity for employment of as many apprentices as is reasonable and practical shall be encouraged and undertaken by both the Employer and the Union.

1. When available the following ratios shall be used:

First 3 Journeymen – 1 Apprentice

Next 3 Journeymen – 1 Apprentice

Next 3 Journeymen – 1 Apprentice, etc.

2. No Apprentices shall be employed who has not satisfactorily met the requirements of the approved training standards.

3. Apprentices shall be paid wage and benefits based on performance, hours completed as outlined below and which are to be utilized predetermined Davis-Bacon projects.

## PERCENTAGE OF HOURS

0 to 1000	60% of the rate for the jobs being performed
1001 to 2000	70% of the rate for the jobs being performed
2001 to 3000	80% of the rate for the jobs being performed
3001 to 4000	90% of the rate for the jobs being performed

The Contractor shall pay on behalf of each apprentice employed the same amount of fringe benefit contributions per hour as paid journeymen Laborers.

The rate applicable on all non-predetermined work is calculated on an established base rate of \$15.30 per hour regardless of the class of work involved.

4. Employers agree to make a reasonable effort to utilize the services of apprentices in their employment so as to provide them exposure and training in all classifications of work being performed on a project which work has historically been recognized as within the work jurisdiction of the Laborers' International Union of North America.

**Section 4: Fringe benefits.** Fringe Benefits shall be paid as follows for the years 2007 through and including 2009:

	2007	2008	2009
<b>Health &amp; Welfare</b>	\$4.25	\$4.50	\$4.75
<b>Pension</b>	\$2.75	\$3.00	\$3.00
<b>Apprentice Training &amp; Certification Program</b>	\$1.00	\$1.00	\$1.00
<b>Annuity</b>	\$2.00	\$2.00	\$2.00
<b>LECET</b>	\$0.25	\$0.25	\$0.25
<b>WV H/H CIF</b>	\$0.20	\$0.20	\$0.20
<b>TOTAL</b>	\$10.45	\$10.95	\$11.20

**Employee Deductions:** The Employer shall upon receiving a signed authorization from his labor Employee, deduct the amount authorized per hour worked for Union dues and forty cents (\$0.40) per hour for the Laborers' Organizing Fund, and remit the same to the West Virginia Laborers' Combined Funds, One Union Square, Charleston, West Virginia 25302.

The Employer agrees to deduct two cents (\$0.02) per hour from the pay of each Employee as a voluntary contribution to Laborers' Political League provided that each such Employee executes or has executed an appropriate voluntary checkoff authorization form. The Employer agrees to deduct three cents (\$0.03) per hour from the pay of each Employee as a voluntary contribution to West Virginia Laborers' District Council Political



Action Committee provided that each such Employee executes or has executed an appropriate voluntary checkoff authorization form.

It is agreed that the Union may divert part of a scheduled wage increase to a fringe benefit program provided the Union gives written notice to the Construction Labor Council of West Virginia, Inc., at least sixty (60) days prior to the negotiated date of increase.

### **Section 5: Trust Funds & Training Center Funds.**

**A.** Payments into the Trust Funds specified in Article XII of the Agreement, shall be made to the respective Fund as indicated below. Where one or more Fund offices are indicated, payments shall be made to that Fund wherein the work is located. Further information regarding the specific Fund and necessary forms for reporting payments may be obtained from the Business Agents or the Fund Office indicated.

#### **HEALTH-WELFARE-PENSION-ANNUITY AND TRAINING FUNDS**

**West Virginia Laborers Combined Funds**

**One Union Square**

**Charleston, West Virginia 25302**

**Phone: (304) 342-5142**

In accordance with Article IV, Section 1, page 6, of the West Virginia Laborers' Trust Fund and of the West Virginia Laborers' Pension Trust Fund and Annuity Trust Fund, payments due to the fund are based on the figure that if an Employee works less than one-half (1/2) hour, no payments shall be made to the fund, but if the Employee works one-half (1/2) hour or more, one (1) hour should be paid on his behalf.

**B.** Payments into the West Virginia Heavy and Highway Construction Industry Fund (WV H/H CIF) shall be made to the following

#### **WEST VIRGINIA HEAVY AND HIGHWAY CONSTRUCTION INDUSTRY FUND**

**Cc Post Office Box 3778**

**Charleston, West Virginia 25337-3778**

**C.** It is agreed and understood that a Contractor representative shall be seated on the Board of Directors for the Union's training center fund. If no Contractor representative is seated on the Board

of Directors, the Union shall provide the Constructors' Labor Council of West Virginia, Inc., a yearly accredited accounting of how the Contractor's contributions to the training center fund are expended.

**Section 6: Miscellaneous.**

**A.** A foreman shall be required when twelve (12) or more laborers are employed by the Employer on any one job. It shall not be the normal practice for a workman regularly classified as a foreman to replace a regular workman on overtime work.

**B.** The term "key person" when used in this Agreement, shall be defined and determined by the Business Manager of the Laborers' Union and the Contractor. It is understood that the prime Contractor shall disclose the number of his key men to be utilized on the project at the pre-job conference. Key persons requested by the Employer must have worked for the Employer *prior to the pre-job conference.*

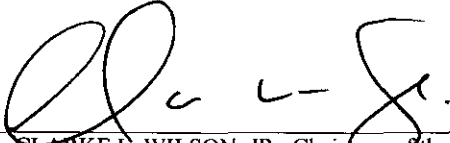
**C.** In the event work is stopped on any project for any reason, the steward shall be the first man recalled upon resumption of the work.


**D.** The Employer having had the opportunity to review authorization cards presented by the Union and to check the same with payroll records maintained by the Employer, does hereby recognize the Union as the exclusive bargaining representative under Section 9(a) of the National Labor Relations Act for all Employees performing work in the trade jurisdiction of the Union on all present and future job sites within the Union's geographical jurisdiction.

**IN WITNESS WHEREOF** of the duly authorized representative of the EMPLOYERS, the CONSTRUCTORS' LABOR COUNCIL OF WEST VIRGINIA, INC. whose signature is affixed hereto by and through its President and Chairman of the Board of Governors and the duly authorized representatives of the UNION, the LABORERS' DISTRICT COUNCIL OF WEST VIRGINIA, whose signature is affixed hereto by and through its Business Manager and President, at Charleston, West Virginia:


**CONSTRUCTORS' LABOR COUNCIL OF  
WEST VIRGINIA, INC.**

  
TODD DUNMIRE, Negotiations Chairman

  
CLARKE L. WILSON, JR., Chairman of the  
Board of Governors

  
KEN BURFORD, President

**LABORERS' DISTRICT COUNCIL OF WEST VIRGINIA**

  
GARY O. TILLIS, Business Manager

## **HIRING HALL AGREEMENT**

### **Laborers**

To provide an efficient, competent and safe system of production in the construction industry, to eliminate the evils of casual employment, thereby securing a fair distribution of employment and a living wage to those workmen who must gain their livelihood from the industry to which they contribute their labor and to provide an orderly procedure of referral of applicants to employment there is hereby established this plan of referral between **CONSTRUCTORS' LABOR COUNCIL OF WEST VIRGINIA, INC.**, hereinafter referred to as "**Employer**", and **LABORERS DISTRICT COUNCIL OF CHARLESTON, WEST VIRGINIA, AFL-CIO** for Laborers' Local Unions 379, 453, 543, 984, 1085, 1149 and 1353, hereinafter referred to as the "**Local Union.**" The Employer shall not be held liable for, and the Union agrees that it will indemnify and hold harmless the Employer from any claims arising from disputes between the Union and its Employees concerning this Hiring Hall Agreement. The Employer and the Union agree as follows:

**Section 1.** The employer, recognizing that Local Unions operate and maintain the only centralized source of skilled manpower available to the construction industry within the area (of contract) and that the Local Unions in order to properly represent the workmen, must be notified of all manpower needs and employment opportunities with the Employer both before the job begins and throughout its progress, agree as follows:

- (a) Before starting work on any job the Employer shall notify the Local Union that has jurisdiction of the work as to the location of the job and approximate starting date.
- (b) Registration and selection of applicants for referral to jobs shall be on a nondiscriminatory basis and shall in no way be affected by union membership, by-laws, rules, regulations, constitutional provisions or any other aspect or obligation of union membership policies or requirements.
- (c) The Employer reserves and shall have the right to accept or reject any applicants referred by the Local Union subject to the appellate procedure provided for herein.
- (d) The Local Union shall maintain a list of persons available for employment at the offices of each Local Union.
- (e) There shall not be discrimination against any employee or applicant for employment because of race, disability, religion,

gender, age, national origin, sexual orientation or lawful Union related activity, and all parties to this Agreement shall comply with the Civil Rights Act of 1964, Executive Orders 11246 and 11375, together with the appropriate provisions of the Federal Highway Act of 1968, as amended.

- (f)** Subject only to the rights of the Contractor to employ and transfer men under Section 2 of this Article and unless authorized to do so by any other provision of the Heavy and Highway Agreement, the Employer shall not employ workmen, either to start a new job or replace a workman or fill a new position on a job in progress without first calling the appropriate union office or representative and requesting a referral of applicants for the job or jobs available. The employer shall not request the referral of more than the number of available jobs. The Local Union shall have twenty-four (24) hours (Saturdays, Sundays, and Holidays excepted) to fill the Employer's request for men qualified to perform the work involved.
- (g)** If the Local Union fails for any reason to refer applicants within the time required, the Employer may secure such workmen from any source available to him and notify the Local Union of the names and dates of such hiring.
- (h)** Effect on Hiring Hall Rules: All referrals by a Local Union to jobs within its jurisdiction shall be made in accordance with these rules except to the extent that any rule contained herein conflicts with either provincial laws or with a term of collective bargaining agreement or in accordance with a variance granted under #8 of the Amended Job Referral Rules. Any Local Union that concludes that these rules conflict with provincial law or the term of a collective bargaining agreement shall apply to the General Executive Board (hereinafter referred to as "GEB") Attorney, furnishing such information as he shall determine. The GEB Attorney shall advise the Local Union in writing whether such a conflict exists. In cases where a term of a collective bargaining agreement conflicts with these rules, the Local Union or District Council shall use its best efforts to modify that term in any successor agreement in order to fully conform to these rules. All newly negotiated agreements should include these rules and, where applicable, the Local Union or District Council shall use its best efforts to include an exclusive hiring hall provision in all successor or newly negotiated collective bargaining agreements.

**Section 2.** Registration and referral of applicants shall be in accordance with the following plan. The Local Union shall register all applicants for employment on the basis of the Groups listed herein. Each applicant shall be registered in the highest priority Group for which he or she qualifies.

### **GROUP A**

All journeymen applicants who have worked a minimum of 500 hours as Laborers in each year for the past four (4) years, have been employed a minimum of 500 hours for a period of at least one (1) year during the last four (4) years by Employers (parties to collective bargaining agreements with the Laborers' District Council of West Virginia) and who have maintained a residence for the past year within the geographical area constituting the normal construction labor market.

### **GROUP B**

All journeymen applicants who have worked a minimum of 500 hours as Laborers in each year for the past four (4) years, have been employed a minimum of 250 hours for a period of at least six (6) months during the past four (4) years by Employers (parties to collective bargaining agreements with the Laborers' District Council of West Virginia) and who have maintained a residence for the past year within the geographical area constituting the normal construction labor market.

### **GROUP C**

All other journeymen applicants for employment

### **APPRENTICES**

Apprentices may be referred to Employers pursuant to the recommendation of the Administrator of the West Virginia Laborers' Training Trust Fund irrespective of the order of their registration. In making a recommendation with regard to a referral from such Group, the Administration shall consider the work to be performed for the Employer and then recommend the first applicant in the order of their place on the list who need training in the type of work to be performed in order that they may acquire the skill necessary to advance them in such program

Applicants without a minimum of 4000 hours of verifiable work experience as a Construction Craft Laborer shall be listed and referred under a separate out-of-work list for apprentices. Said applicants must be registered with and participating in the Apprenticeship Program developed and administered by the West

Virginia Laborers' Joint Apprenticeship Training Committee pursuant to standards duly adopted.

Apprentice applicants who are registered with and participating in the Apprenticeship Program developed and administered by the West Virginia Laborers' Joint Apprenticeship Training Committee shall be listed on a separate Referral list.

- (A) The Union shall maintain each of the separate Group lists set forth above which shall list the applicants within each Group in the order they registered as available for employment.
- (i) Only applicants who are not currently employed at the trade may register their availability for referral. Applicants who, after registering their availability for referral, on their own, obtain one or more jobs at the trade in the aggregate lasting 100 hours or 200 hours as an asbestos or hazardous waste worker, must advise the Local Union immediately. Those applicants will then be removed from the out-of-work list. Failure to advise the Local Union of such employment as required herein will result in the applicant being removed from the out-of-work list. However, this section does not apply to applicants who obtain their own employment outside of the local union's jurisdiction.
- (B) An applicant seeking referral to a job must file with the Local Union a signed and dated referral form providing names, telephone number, geographical areas in which he/she is seeking work, social security number, and stating any skills the applicant possesses and the jobs the applicant is able to perform, including any relevant licenses or certifications. Blank referral forms will be available at the Local Union. The Local Union will compile an out-of-work list, consisting of the applicants who have registered their availability for referral. The Local Union may confirm any prior employment, licenses, or certifications listed by an applicant. The Local Union has five business days from the time a member places his name on the out-of-work list to challenge an applicant's representations concerning his prior employment, licenses, or certifications. If the Local Union makes a timely challenge, it must promptly notify the applicant in writing, who shall have five business days from the receipt of this notice in which to respond and to submit any relevant information. Any applicant who remains aggrieved by a final decision of the Local Union may file a protest with the Independent Hearing Office, who shall finally

resolve all such disputes in accordance with procedures that he shall establish.

- (C)** The application will remain in effect for a period of twelve (12) months or such earlier period as provided in Subsection (H) below. At the expiration of twelve (12) months or such earlier period as set forth in Subsection (H) below, the applicant's name will be removed from the Referral List and thereafter the applicant will not be eligible for referral until re-registering with the office of the Local Union
- (D)** Once an applicant has registered his or her availability for referral by a signed referral form with the Local Union, the applicant must afterward register his or her availability by returning a signed, self-addressed, postage paid postcard, which will be provided by the Local Union.
- (E)** The Union shall refer applicants to Employers by first referring applicants in Group A in the order of their place on said list, and then referring applicants in the same manner from the list in Group B, then Group C, unless the applicant has given the Local Union notice in writing of unavailability for a period not to exceed thirty (30) days. The applicant will only be permitted to freeze their application once within a twelve (12) month period.
- (F)** The order of referrals set forth above shall be following except in cases where:

  - (i)** Employers require and call for employee(s) possessing skills and/or abilities, in which case the Union shall refer the first applicant on the list possessing such special skills and abilities.
  - (ii)** Referrals for job orders shall be processed at the Local Union office Monday through Friday during a three (3) hour time period to be established by the Local Union. Applicants holding a position on the out-of-work list should be available at the numbers(s) on file with the local during these time periods in order to respond to requests for referrals. In filling the request for referrals, the local shall call each qualified applicant, in order of the out-of-work list, and let the phone ring no less than ten (10) times per referral call. Each qualified applicant will only be called once per job order. In filling requests made by Employers outside of the Local Union's designated time period, for laborers required to report to work before the start of the following business day,



the Local shall expedite such requests immediately by contacting, in order of the out-of-work list the required number of qualified applicants, however applicants who are unavailable or refuse such referrals will not be penalized.

An applicant may list up to three (3) phone numbers where the applicant can be reached when the Local Union processes work orders. The local will call an applicant at home and if there is no answer immediately call a second number on file for that applicant; if there is no answer immediately, call a third number on file for that applicant. The Local Union will only offer referral to the applicant named on the out-of-work list.

- (iii) Emergencies or where the request from the employer is received upon short notice and the contact point is such a distance from the residence of an applicant that the applicant could not reasonably be expected to fulfill the request.
  - (iv) The applicant is medically disabled from working and has submitted proof of such disability, the applicant will maintain his/her place on the list and will not be called for referral until such time as they have presented medical evidence that they have been released for regular work.
  - (v) An applicant occupying a position on the out-of-work list who accepts employment outside his/her home local union's jurisdiction will not jeopardize his/her position on the local's out-of-work list
- (G) The Local Union Business Representative shall have the authority to select and refer the Laborer Steward for each job regardless of their position on the list so long as he/she has been pre-qualified.
- (H) In cases of the occurrence of any of the following events, the applicants will be removed from the referral list and they will not thereafter be eligible for referral until re-registering in person at the Office of the Local Union.
- (i) Refusal of three (3) consecutive job referrals.
  - (ii) Upon acceptance of a referral and failure to appear for referral by the time notified to appear and commence work.

- (iii) Voluntary termination of employment after having been referred.
  - (iv) Refusal of two (2) job referrals by applicants who have indicated their willingness to accept work out of the jurisdiction of the Local will result in their removal from consideration for such work until they re-register.
  - (v) Failure to notify the Union in the event they become employed.
  - (vi) An applicant will be dropped to the bottom of the referral list if the applicant is unavailable for three (3) consecutive call outs on three (3) separate days during the Local Union's designated call-out period.
- (I) An applicant who is referred to a job which lasts One Hundred (100) hours or less or Two Hundred (200) hours or less as an Asbestos or Hazardous Waste Worker either because (1) the job is terminated or (2) the applicant is laid off or discharged, will return to his or her position on the out-of-work list prior to receiving the referral. However, after receiving a job referral immediately following such a short-term referral regardless of its length, that individual must again register in order to be included on the out-of-work list. The short-term referral provisions herein are inapplicable and the applicant will be removed from the out-of-work, list for a period of sixty (60) days if the applicant takes any action within the first ten (10) days of employment designed to manipulate this provision of the Amended Job Rules, such as voluntarily quitting or requesting to be laid off or discharged from a job to which he or she is referred.
- (J) In the event the Union does not provide applicants an opportunity to register during normal business hours of the Union each business day of the week, registration of applicants for referral shall be held not less than once each week for a period or periods of not less than two (2) hours duration, and such period shall be established by the Union, and notification thereof shall be given to all interested parties by posting in the Union office not less than forty-eight (48) hours before registration.
- (K) The Employer shall have the right to accept or reject any job applicant. In case of reduction of forces, the Employer shall have the right to select those best qualified, in his opinion, to be retained.

- (L)** An applicant shall not be referred to an employer if the applicant was previously discharge for cause by same employer. Applicants who are twice lawfully rejected by an employer for lack of skills, after referral by the Local Union, shall not be eligible for referral to a job requiring the same skills without first providing the Local Union with evidence that he or she has acquired such skills be either completing a recognized training program or working on job(s) he or she obtained on their own with a union employee.
- (M)** In the event any job applicant is aggrieved (1) with his failure to qualify for registration or (2) with his group classification or (3) with his order of referral or (4) by action of the Employer in connection with hiring, 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 the registration and the Local Union office a written statement of the grievance clearly and specifically setting forth the wrong or violation charges. An appellat tribunal consisting of an employer representative and only an impartial chairman appointed jointly by the Council and the Union representative shall consider the grievance and render a decision which shall be final and binding. The appellate tribunal is authorized to issue procedural rules for conduct of its business but it is not authorized to add to, subtract from, or modify any of the provisions of this system and its decision shall be accord with the system.
- (N)** Employees may be transferred from one job to another without being referred by the Union provided transfer is in the Union's territory and the appropriate Union has been notified.
- (O)** Unless otherwise authorized to do so by any other provision of the Heavy and Highway Agreement, the Employer may bring into any job from any place or Local Union jurisdiction up to two (2) men or twenty-five percent (25%) of all the men employed on the job whichever number is greater. The Employer may request that former employees, who have been on layoff status for a period of twelve (12) months or less, be referred for employment without regard to their position on the group lists; provided, however, such men requested will be counted towards and limited to the two (2) men or twenty-five percent (25%) provision as set forth in this sentence. If the former employees are available, they shall be referred in accordance with the Employer's request. The Union agrees

to give the consideration to any Employer's request for additional men consist with the purpose of this section.

- (P)** The Union shall post, in appropriate places where notice to employees and applicants are customarily posted, all provision relating to the hiring arrangement set forth in this Agreement.

It is also understood that the above-named Laborers' District Council for the State of West Virginia is acting only as agent in the negotiation of this contract and that its agent for those Local Unions, affiliated therewith, in no event shall the Laborers' District Council of the State of West Virginia be bound as principal or be held liable in any manner for any breach of this contract by any of said affiliated Local Unions for whom it is acting. It is further agreed and understood that the liabilities of the Local Unions that have authorized the negotiations and execution of this Agreement shall be several and not joint.

No liability shall arise on the part of either contractors above referred to, or Local Union and Council above referred to, by any reason of any unauthorized act by any employee of such contractor, Local Union or Council, unless and until such unauthorized act is brought to the attention of the party affected and that party is given a reasonable opportunity to correct said act or ratify same.

- (Q)** Dissemination of the Referral Rules: These rules shall be (a) conspicuously posted at the offices of each Local Union, and (b) published in The Laborer. Additional copies of these rules shall be made available to members upon request, subject to the payment of reasonable copying costs. New members shall receive a copy of the job referral rules upon admission to membership.
- (R)** Job Referral Information: Local Union shall maintain accurate and current records of all job referrals. The records shall be preserved for a period of three (3) years from the making of each record. The records shall include the following information:
- (i)** All registration by applicants of their availability for referral, including the date of each applicants registration.
  - (ii)** A current out-of-work list, including all applicants whose registration of availability for referral are then in effect,

and the date of each applicant's registration.

- (iii) All requests from employers for workers, including the date of each request, the location of the job site, the length of the job, if known, and any request by the employer for applicants with special skills, licenses, or certifications, or an applicant employed by the employer.
- (iv) All instances where a job referral is not made because an applicant (1) refuses his referral, (2) is unavailable or (3) lacks the required skill, including (where applicable) the date and time of the call(s), the person making the call(s), the name of the employer, the location of the job site, the start date of the job, the basis for not making the referral, the results of the call including whether the call was answered and by whom, and what response, if any, was made, and
- (v) All job referrals made, including the applicant referred, the date on which the applicant registered his or her availability for employment, the date of the referral, the employer, the location of the job site, the date the applicant was hired, and the date any employment terminated.

**(S) Access to Job Referral Information:**

- (i) Any applicant can inspect or copy any record containing the job referral information described in #6 of the Amended Job Referral Rules. An appointment for inspection shall be scheduled within five (5) days of request. Copies of 500 pages or less shall be provided within ten (10) days of request. Copies of more than 500 pages shall be provided within thirty (30) days of the request. A Local Union may charge \$0.50 per page to copy the first twenty (20) pages, and \$0.25 per page thereafter.
- (ii) Lists containing the information described in #6(b) and (e) of the Amended Job Referral Rules shall be conspicuously posted, or otherwise immediately available for inspection at the offices of a Local Union on a weekly basis, so that the previous week is posted or immediately available by close of business on the following Monday. The information shall remain posted or immediately available for at least two weeks.

**(T) Applications for variance from a provision(s) of these Uniform Job Referral Rules may be made in writing to**

the GEB Attorney. The GEB Attorney may grant such an application provided he determines that the variance is consistent with the LIUNA Ethical Practice Code, with applicable law, and is intended to further a legitimate purpose. Any such variance shall be effective for a period of one year and shall be subject to further application to the GEB Attorney in order to continue beyond one year. Further, a variance shall be subject to any other condition imposed by the GEB Attorney.

- (U)** Any complaints or concerns regarding alleged violations of the Code of Ethics and/or Uniform Job Referral Rules to discriminate, punish, retaliate or reward members for their Union political or election activity should be promptly addressed to Inspector General W. Douglas Gow, (202) 942-2360.
- (AA)** "Normal construction labor market" referred to in the Uniform Hiring Hall Procedure shall conform to the territorial jurisdiction of the Union as well as any additional area defined by the Secretary of Labor to be the appropriate prevailing wage areas under the Davis-Bacon Act.
- (BB)** "Resident" means a person who has maintained his or her permanent home in the above-defined normal construction labor market for the required period or, having had a permanent home in such area, has temporarily left with the intention of returning to that area as his permanent home.
- (CC)** "Laborer" or "Laborers" means a person working for a contractor in the performance of work within the classification historically and traditionally recognized in the industry as the "building and construction," "heavy," or "highway."