

INDIANA BUILDING AGREEMENT

PREAMBLE

This Agreement made and entered into this 1st day of April, 2009 by and between the undersigned Contractors whose names are hereto subscribed, Party of the First Part, hereinafter referred to as "Employers" and the International Union of Operating Engineers, Local Union No. 841, Terre Haute, Indiana, Party of the Second Part, affiliated with the American Federation of Labor-Congress Industrial Organization, hereinafter referred to as the "Union".

WITNESSETH:

That, whereas, it is believed to be of mutual advantage that a workable agreement shall exist between and among the Employers and the Union in employment of Operating Engineers in all classes of public works engaged in by the Employers in the counties of the State of Indiana, hereinafter listed; and

Whereas, the constitutional right of the Employer to hire labor and the constitutional right of workers and employees to labor for such compensation as may be agreed upon are mutually understood and respected by the Parties hereto; and

Whereas, unreasonable demands by organized labor and unreasonable requirements by employers of labor are believed to be of equal hardship to and upon the welfare of the people and upon the communities wherein the Employers and the employees reside, and that Operating Engineers should be paid and should be willing to work on a scale and basis commensurate with their skill and knowledge of their trade and in keeping with the wages and the standard of living in the communities wherein their work is performed.

IT IS THEREFORE UNDERSTOOD AND AGREED, by and between the Parties hereto, and as follows:

ARTICLE 1 - BARGAINING UNIT

The Employers recognize the International Union of Operating Engineers, Local Union No. 841, as the exclusive representative for the purpose of Collective Bargaining for all employees whose work is described, classified and set forth in this Agreement.

The Union recognizes the Building Division - ICA, Inc. as the exclusive representative for the purpose of Collective Bargaining for the area they represent whose work is described, classified and set forth in this Agreement.

ARTICLE 2 - WORK COVERED

This Agreement shall cover all construction work inside the established property boundary lines and construction work outside the boundary lines that is incidental to the construction work inside the boundary lines of Public and Private Utility Plants, Office and Commercial Buildings, Schools, Universities, Colleges, Churches, Refineries, Chemical Plants, Water-Oil-Gas-Chemical Tanks, Pumping Stations, Disposal Plants, Apartment Houses, Factories, Grain Elevators, Towers, House and all other work let as a Building Contract, except such as are incidental to street or

highway improvements and work covered by the Underground Utilities and Subdivision Agreements of Local No. 841.

The local production of materials, whether such materials are produced by the Contractor himself or for his own use. Local production of materials is construed to be the production of crushed stone, gravel and/or other materials with portable or semi-portable crushing, screening or washing plants established, or reopened or to be established in the vicinity of the work for the purpose of supplying materials to be incorporated into the work on a designated project or projects.

This Agreement shall have effect on and cover employees performing work covered by this Article 2 of this Agreement for the Employer and all job site equipment repairs and maintenance 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 Article 7 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 assistance is needed, they shall be assisted by an employee covered by this Agreement.

ARTICLE 3 - TERRITORY

This Agreement shall cover work done in the following counties in Indiana in which the Union has territorial jurisdiction.

Warren, Fountain, Montgomery, Boone, Hendricks, Putnam, Parke, Vermillion, Vigo, Clay, Owen, Morgan, Monroe, Greene, Sullivan, Knox and Daviess.

ARTICLE 4 - JURISDICTION

This Agreement shall cover all persons engaged in supervising, controlling, erecting, dismantling and repairing, operating, erecting, dismantling or the repairing of all hoisting and portable machines, all refrigerating machines or units and engines used in or upon wrecking, digging, boring, building and erecting foundations, buildings, tunnels and subways, dams, reservoirs, disposal plants, bridges, railroads, streets (paving and repair), road building construction (including grading and repair), sewer, water, gas and oil lines, allotment development construction, harbor and river dredging, the construction and repair of all docks, wharves, piers, shipyards, and sea walls; all sand, gravel and stone pits; quarries and material yards (permanent and temporary), sand, rock and gravel screening machines; motor generators (when used for welding and cutting or for converting or transforming electric currents, irrespective of their size or motive power); all machines used to sweep, clean and remove debris and snow from streets and roads; all mine hoists, telfers, grab buckets, pumps, siphons, pulsometers, generators, concrete mixers (irrespective of capacity), concrete pumps of all sizes and capacities, stone crushers, air compressors, all water-test and blast hole drilling machines; all sand blasting and other machines and boilers used in the cleaning and washing of buildings, all boilers (irrespective of size or motive power) used for furnishing temporary heat on buildings under construction, for the heating of material, heating water, or furnishing steam for the operation of all machines, engines and other appurtenances herein specified; all locomotive, tractor and truck type cranes; all derricks, boom hoists (of all descriptions and capacities) and automatic hoists; house and all elevators (permanent and

temporary) used for hoisting building material or lowering debris or carrying workmen from floor to floor in buildings under construction and repair; all street rollers, steam and other motive power shovels, all LeTourneau and other types of scoops, pull shovels, mucking machines, draglines and cableways; all clamshell and orange peel buckets when used in connection with any machine or with derrick or boom hoists for excavating, handling, storing, loading or unloading materials; all land and floating pile drivers; floating derrick barges and boats, floating and self-propelled dredges and rock drilling plants; all dinky and standard locomotives, derrick cars, tractors and all tractor-propelled machinery; all power and elevator graders, scarifiers, bulldozers, Barber Green Loaders; all trenching and ditching machines, all mechanical hoe-type machines, back-fillers and conveyors; all cranes, derricks, and machines, engines and boilers used in asphalt and concrete mixing plants and all other engines and machines (irrespective of capacity or motive power) used on building and construction work or in the loading, unloading, or storage of commodities at or in terminals, helicopter and crew.

ARTICLE 5 - 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, whichever is the later. This clause shall be enforceable to the extent permitted by law.

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

Any employee discharged under the provisions of the first paragraph of this Article 5 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, current quarterly dues and any applicable working dues assessment, as negotiated, and the Union shall issue receipt therefor. Upon presentation of such receipt to the 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.

Nothing contained in this Article shall be construed so as to require the Employer to violate any applicable law.

ARTICLE 6 - SUBCONTRACTORS

The Employer agrees that he, or any of his subcontractors on the job site, will not contract or subcontract work to be done within the occupational jurisdiction of the Union, at the site of construction, alteration, painting, or repair of a building structure, or other work, except to a person, firm or corporation, party to a current labor agreement with the Union, providing the subcontractor is given the opportunity to sign the same agreement as the prime contractor.

ARTICLE 7 - CLASSIFICATIONS, WAGES & CONTRIBUTIONS

All employees shall take the classifications with respect to their work and duties, and shall receive the hourly rate of pay established for each classification as shown by Craft Classifications and Rate of Pay.

CRAFT CLASSIFICATIONS

(1) Air Compressors 600 Cu. Ft. and over, Two Air Compressors, Apsco Paver, Asphalt Plant Engineer or Pug Mill, Back Filler, Backhoe, Barber Green Loader, Boiler Operator, Boom Tractor, Boom or Winch Truck, Boring Machine, Brush Burner, Brush Mulcher, Bulldozer, Bulk Cement Plant, CMI or Similar Type Machine, Cableways, Central Mix Plant Engineer, Chair Cart (Self-Propelled), Cherry Picker, Chip Spreader, Concrete or Asphalt Curb Machine (Self-Propelled), Concrete or Asphalt Milling Machine, Concrete Mixers With Skip, Concrete Plant Engineers, Concrete Pump, Concrete Spreader, Curing Machine, Derricks, Ditching Machine 6" and Over, Ditching Machine with Dual Attachment, Draglines, Dredge Engineer, Dredge Operator, Dredging Equipment, Drilling Machine, including Well Testing, Caissons, Shaft or any similar type Drilling Machine, Electric Overhead Cranes, Elevating Machine, Engine or Rock Crusher Plant, Euclid Loader, Farm Tractor with Attachment, Finish Machine, Forklift (Except when used for Landscaping Work), Formless Paver, Freezing Operator, Gradall, Gravel Processing Machine, Head Equipment Greasers, Helicopter Crew (3), Hydra Ax, Hydra Crane, Hydra Seeder, Incinerator Operator, Loaders, Lull (or similar type machine), Marine Scoops, Mechanics, Mesh Placer, Mixer Over 14S Capacity, Motor Patrol, Mudcat, One Drum Hoists with Tower or Boom, Pavement Breaker (Self-Propelled), Paver Operator, Paint Machine, Pile Driver (Skid or Crawler), Pipe Bending Machine, Pipe Cleaning Machine, Pipe Wrapping Machine, 4 Point Lift System (Power Lift or similar type), Post Hole Digger (Self-Propelled), Power Blade, Power Broom (Self-Propelled), Power Cranes, Power Shovel, Power Sub-Grader, Push Tractor, Refrigerating Machine, Repair and Maintenance of All Equipment, Rock Spreader, Rollers on Asphalt, Gravel, Macadam and Brick Surface, Large Roller on Earth, Root Rake, Ross Carrier or Similar Machine, Scoop-Mobiles, Skid Steer (Bobcat or similar type), Soil Cement Machines, Soil Stabilizer (Seaman Tiller, Bo Mag, Rago Gator and similar types), Snooper Truck Operator, Span Saw (and similar type), Standard or Dinkey Locomotives, Straw Blower, Stump Remover, Tampers (Self Propelled), Tournadozer, Tournamixer, Tournapull, Tower Machines, Tractor Highlift, Tractor Operating Scoops, Tractors Without Winch, Tree Mover, trimmer, Truck Crane, Truck or Skid Mounted Tower Crane, Tug Boat Operator, Two Drum Machine, Two Cage Hoist, Well Point System, Winch or Hydraulic Boom Truck, Off Road Haul Trucks (or similar type machine).

RATES PER HOUR

EFFECTIVE: 4/1/09 4/1/10

\$27.85

(2) Air Compressor Under 600 Cu. Ft., Air Tugger, Air Valves or Steam Valves from Plant, Barrell Type Mixer, Bull Float, Concrete Mixers without Skip, Concrete Saw (Self-Propelled), Conveyor, Deck Hands, Distributor Operator on Trucks, Ditching Machine under 6", Engine Tenders, Equipment Greaser, Fireman, Flex Plane, Forklift (when used for landscaping work), Form Grader, Form Tamper, Gunite Machine, House Elevators (when used for hoisting material), Mixers - 14S Capacity or less, Mud Jack, Oilers, One Drum Machine, One Welding Machine, One Water Pump, Operators to do winter repair work in shop between November 1st and March 1st, Rock Crusher, Siphon and Pulsometer, Small Rollers on Earth, Snooper Truck Helper, Striping Machine (Motor Driven), Super Sucker (and similar type), Switchman, Track Jack, Truck Crane Drivers - Oilers, Two to Four Generators or Welding Machines, Two to Four Water Pumps, Wagon Drill

RATES PER HOUR

EFFECTIVE: 4/1/09 4/1/10

\$20.70

Increase of \$1.40 per hour, effective 4/1/10 may be distributed as designated by the Union.

A. Contributions to the Health and Welfare Fund, Pension Fund, Apprenticeship and Training Fund and Qualified Savings Plan Trust Fund shall be as follows:

<u>EFFECTIVE</u>	<u>HEALTH AND WELFARE</u>	<u>PENSION</u>	<u>QUALIFIED SAVINGS PLAN</u>	<u>APPRENTICE-SHIP AND TRAINING</u>	<u>WORKING DUES ASSESSMENT</u>
4/1/09	\$5.55	\$5.50	\$2.00	.65	*See Below
4/1/10					

***Working Dues - 3% of straight time rate for all hours worked including overtime from April 1, 2009 thru May 31, 2009. Effective June 1, 2009, Working Dues will be 3.5% of gross wages.**

Any increase in Health & Welfare contributions can only be made on anniversary date of Agreement.

B. All equipment listed in the above classifications will be manned by Operating Engineers irrespective of motive power.

C. The parties agree that Operating Engineers covered by this Agreement, who are operating certain types of cranes, shall work through the Joint Apprenticeship & Training Program of Local 841 to attain crane certification. Further, the parties agree that the National Commission for the Certification of Crane Operators (NCCCO) and/or the Operating Engineers Certification Program (OECF) or any other designated OSHA approved certification program will be recognized as the certifying authorities. All Operators with certification shall receive fifty cents (\$0.50) per hour above the regular rate of pay for operating all cranes.

D. This Agreement contemplates that as and when equipment not listed is about to be introduced on a job site, the Employer and the Union will promptly negotiate an appropriate rate, classification and working rule for its operation no less than five days after the equipment is put to work.

E. Employees operating all booms from 149 ft. to 199 ft. including jib, shall receive an additional one dollar (\$1.00) per hour above the rate. Employees operating all booms over 199 ft. including jib, shall receive an additional one dollar and fifty cents (\$1.50) per hour above the regular rate.

F. Employees operating scoops, pulls, or tractors hooked in tandem shall receive an additional one dollar (\$1.00) per hour above the regular rate.

G. Employees operating scoops, pulls, or tractors pulling any other hauling unit in tandem shall receive an additional one dollar (\$1.00) per hour above the regular rate.

- H. Engineers shall wash out boilers and make all necessary repairs to their machines and shall receive the rate of wages applying to that day for the same. No employee shall be allowed to perform any duties outside of his class of work. The installing or removing of machinery, pipe fitting and repairing necessary to operate same is considered his class of work.
- I. A twenty-percent (20%) premium above the wage listed in Article 7 shall be paid when employees are working in underground storage projects; or on Hazardous Waste Projects; or when operating equipment on Asbestos Removal projects where the equipment comes into direct contact with asbestos, or when such employee(s) are required to wear protective outer clothing/apparatus.
- J. 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. Members of Local 841 who move up in to a supervisor capacity will still be entitled to the fringe benefit package afforded to all other operating engineers. Supervisory fringe benefits shall be paid on all hours worked.

ARTICLE 8 - PENSION FUND

It is mutually agreed by the Parties to this Agreement that the Party of the First Part covered herein shall become and/or continue to be a Party of the Central Pension Fund established by the International Union of Operating Engineers, Local Union No. 841. The contribution by the Party of the First Part shall be as provided in Article 7, provided such Pension Fund meets all the requirements of State and Federal laws and regulations applicable thereto and is approved pursuant to the Internal Revenue Code.

ARTICLE 9 - HEALTH & WELFARE

It is mutually agreed by the Parties to this Agreement, that the Party of the First Part covered herein shall become and/or continue to be a Party of the Health and Welfare Fund established by the International Union of Operating Engineers, Local Union No. 841. The contribution by the Party of the First Part shall be as provided in Article 7, provided such Health and Welfare Plan meets all the requirements of State and Federal laws and regulations applicable thereto and is approved pursuant to the Internal Revenue Code.

ARTICLE 10 - APPRENTICESHIP & TRAINING

It is mutually agreed by the Parties to this Agreement that the Party of the First Part covered herein shall become and/or continue to be a Party of the Joint Apprenticeship and Training Trust established by the International Union of Operating Engineers, Local Union No. 841, provided such Joint Apprenticeship and Training Trust meets all the requirements of State and Federal laws and regulations applicable thereto and is approved pursuant to the Internal Revenue Code.

ARTICLE 11 - I.U.O.E. LOCAL 841 QUALIFIED SAVINGS PLAN TRUST

The Employer hereby agrees to accept and be bound by the terms and conditions of the International Union of Operating Engineers Local No. 841 Qualified Savings Plan Trust Agreement, including any amendments or changes thereto, together with such Plan Rules and Regulations that may be established from time to

time, provided said Trust Agreement and Plan Rules and Regulations are established and maintained in accordance with applicable State and Federal laws and regulations and that such Plan or Fund receive and maintain a tax qualified status with the Internal Revenue Service. The Employer further agrees to accept as Trustees those Trustees selected in the manner provided in said Trust Agreement. The Employer further agrees to pay contributions into said Plan or Fund in such amounts as set forth in Article 7 of this Agreement.

It is mutually agreed by the Parties to this Agreement that the I.U.O.E. Local No. 841 Qualified Savings Plan Trust shall be established and maintained as a defined contribution plan rather than as a defined benefit plan, as defined under the terms of ERISA. Accordingly, contributing Employers shall have no liability to said Plan or Fund beyond the obligation to make such contribution payments as set forth in Article 7 of this Agreement and Article X of the Agreement and Declaration of Trust of the I.U.O.E. Local No. 841 Qualified Savings Plan Trust, as amended from time to time.

ARTICLE 12 - FRINGE BENEFIT FUNDS

In the event the Board of Trustees determines the necessity of an increased employee contribution and in the event said Board notifies its appropriate Local Union and the Employer of such determination and the effective date, said contributions shall be increased in the amount determined by the Board of Trustees.

It is agreed that the Board of Trustees will notify the Building Division - ICA, Inc. in writing of any such increase sixty (60) days prior to taking final action on the increase. Any increase in employer contribution pursuant to this Article shall result in a corresponding decrease in the same amount in the straight time hourly rate.

ARTICLE 13 - IUOE LOCAL 841 PAC FUND

Effective April 1, 2009, and expiring at midnight March 31, 2011, upon receipt of voluntarily signed deduction authorization forms from covered employees, the Employers will deduct from the wages of such employees five cents (\$0.05) per hour worked ("Deduction"), and shall pay the Deduction to the International Union of Operating Engineers, Local 841 PAC Fund ("Local 841 PAC"), PO Box 2157, Terre Haute, IN 47802.

It is agreed that the Deduction is not a condition of membership in the International Union of Operating Engineers, Local 841, or of employment with Employers, and that the Local 841 PAC will use such monies in making political contributions in connection with Federal elections. Payments to the Local 841 PAC, accompanied by monthly reports on forms so provided by the International Union of Operating Engineers, Local 841, shall be remitted at the same time as required for the monthly pension and welfare payments on a separate check made payable to the Local 841 PAC at the above address.

The Union agrees to indemnify and hold harmless the Employers from any claim, suit, cause of action, or otherwise with regard to creation of this Deduction, its administration, or any act or action in connection therewith, and such indemnity and agreement to hold harmless shall include, but not be limited to, the payment of the Employers' costs and attorneys' fees.

The costs of administering the Deduction are incorporated into the economic package provided under the terms of this

Agreement.

ARTICLE 14 - WORKING DUES ASSESSMENT

Upon receipt of an Employee's voluntary written authorization which shall be irrevocable for a period of one (1) year or until the termination of the collective bargaining agreement, which ever occurs sooner, the Employer shall check off and deduct from wages each payroll period from April 1, 2009 through March 31, 2011, such amount as listed in Article 7, Sub Section C, as working dues as part of membership obligation to Local Union No. 841. Said deduction shall be made from earned pay on each regularly scheduled pay day and shall be remitted to Local Union No. 841 together with all necessary health and welfare, pension, annuity and apprenticeship and training contributions, but by separate check and with report of hours.

Authorization shall be automatically renewed and shall be irrevocable for successive periods of one (1) year, unless proper notice of revocation is given, which notice must be in writing given to the Employer and the Local Union not more than sixty (60) days nor less than thirty (30) days prior to the expiration of each period of one (1) year, or each successive collective bargaining agreement between the Employer and the Local Union, whichever occurs sooner. In case no such notice is given, the authorization shall continue in effect from year to year until such notice is given.

ARTICLE 15 - WORKING HOURS

The regular work day shall consist of eight (8) consecutive hours commencing at 8:00 A. M. unless otherwise mutually agreed upon, with a meal period of one-half (1/2) hour on the employee's time.

Employees shall be paid one and one-half (1 1/2) times the regular rate of wages for all hours worked in excess of eight (8) hours per day or forty (40) hours in any five day week and employees shall be paid one and one-half (1 1/2) times the regular rate of wages for all hours worked on Saturday.

All **time** shall be paid for by the hour and half hour. Any fractional part of a half hour shall be a half hour.

ARTICLE 16 - HOLIDAYS

The following holidays, together with Sundays, shall be regarded as legal holidays and double time shall be paid for all work performed on these days: New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Friday after Thanksgiving Day, and Christmas Day or days recognized as such. There shall be no work of any kind performed on Labor Day except to save life or property. When the Holiday falls on Sunday, it shall be observed on the Monday immediately following. If it falls on any other day than a Sunday, it will be observed on that day.

ARTICLE 17 - REPORTING & GUARANTEED HOURS

The employee shall report every work day unless notified by the Employer by 5:00 A. M. the same day, or as otherwise mutually agreed, and if not so notified shall receive two hours pay at the applicable rate for that day, but must remain on the job if requested. If he starts to work he shall be paid four hours and if he works over four hours he shall receive eight hours pay.

Inclement weather: (a) If an employee starts to work he shall be paid for four (4) hours, and if he works more than four (4) hours he shall receive a full day's pay. Unless, however, work is stopped due to inclement weather or equipment breakdown, in which case employees shall be paid for actual hours worked, but not less than two (2) hours pay, unless otherwise agreed to between the Employer and the Business Representative prior to the start of work.

The engineer may be required by the Employer to remain on the job for the pay period to which he is entitled. If the operator leaves the job on his own accord he shall be paid only for the hours he actually worked. However, if he is sent home by the Employer or his representative he shall be paid in accordance with the preceding paragraph.

Whenever an employee starts to work on Saturday, Sunday or Holidays or days observed as such, he shall be paid at least four (4) hours at the applicable premium rate of pay. All time worked beyond the first four (4) consecutive hours on Saturday, Sunday or Holidays the employee shall be paid at the applicable premium rate of pay for the actual hours worked. Unless, however, work is stopped because of inclement weather or equipment breakdown, in which case employees shall be paid at the applicable premium rate of pay for actual hours worked, but not less than two (2) hours pay, unless otherwise agreed to between the Employer and the Business Representative prior to the start of work.

ARTICLE 18 - 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.

ARTICLE 19 - SHIFT WORK

If the Employer wishes to work two (2) or three (3) shifts the following will apply: The first shift will be between 8:00 A. M. and 4:00 P. M. The second shift will be between 4:00 P. M. and 12:00 midnight. The third shift will be between 12:00 midnight and 8:00 A. M. An employee working on the second shift shall receive premium pay of thirty five cents (\$.35) per hour over the employees basic hourly rate of pay. An employee working on the third shift shall receive premium pay of fifty cents (\$.50) per hour over the employees basic hourly rate of pay. No shift work shall be less than eight hours and one-half hour shall be allowed each shift for a lunch period with no deduction in pay.

It may be mutually agreed upon between a Representative of the Company and a Representative of the Union, that a rotating shift of four men instead of three can be used when operating on a seven (7) day per week continuous shift basis.

If the Employer calls for the second or third shift, or both, the men sent to the job shall be guaranteed three consecutive shifts, starting as of that date, or will be paid at the rate of one and one-half times the regular rate of pay for whatever shifts they do work under three.

ARTICLE 20 - EMERGENCY WORK

In the event an employee has completed his regular shift and left the site of work and is called back to perform work of

emergency nature, such employee shall be paid at least two hours at the applicable overtime rate.

ARTICLE 21 - OILERS

There shall be a fireman or oiler on all backhoes, clamshells, draglines, shovels, locomotive cranes, crawler cranes, piledrivers, derricks, dual drum mixers, gradall or any other machine similar in character to the above mentioned machines. Oilers need not be employed on hydraulic crane type backhoes of three and one half cubic yard or less. However, the operator shall report for work one hour before his regular starting time, or at the discretion of the Employers, shall work one hour after his regular quitting time to grease, oil, and clean the machine for which work he shall receive one hours pay at the applicable overtime rate.

ARTICLE 22 - MASTER MECHANICS & MECHANICS

Master Mechanics and Mechanics are employed by the Employer because of their special knowledge of the equipment and their ability to make whatever repairs may be required. It is agreed that when any machine on the job is in need of repair, and repair work is begun thereon by the Master Mechanic or Mechanic, the Operator shall be retained to assist the Master Mechanic or Mechanic at the regular rate of wages. If a crane breaks down in the first half of the shift the oiler will only be retained for the completion of four (4) hours, if in the second half, the oiler will be retained for the remainder of the shift. When repair work on any machine continues for subsequent shifts, the Operator shall be employed as Mechanic's Helper at the rate designated for the Operator. Master Mechanic shall receive thirty cents (\$.30) per hour above the rate for Group 1.

ARTICLE 23 - UTILITY OPERATORS

When eight or more principal operators are employed on the payroll of an Employer on any one job there shall be a utility operator whose duties shall consist of: (a) Operate a machine that is not assigned but is to be used temporarily for spasmodic operations. (b) Shall perform minor repair work not normally assigned to a Master Mechanic or Mechanic. (c) Shall be permitted to operate any assigned machine until a replacement can be secured for an absent operator. (d) Can be used to direct the operations of other operators.

When five additional operators are employed on a job by any one individual Employer there shall be a Master Mechanic.

For each fifteen additional operators there shall be a Utility Operator employed with the same duties as outlined in Article 23, first paragraph above.

Master Mechanics or anyone acting in a supervising capacity for an Employer is not allowed to operate any equipment coming under the jurisdiction of the International Union of Operating Engineers.

When operators are employed on the payroll of an Employer, on more than one shift on any one job, this Article 23 shall be interpreted on the basis of each separate shift. Utility Operator shall receive thirty-five cents (\$.35) per hour above the rate for Group 1.

ARTICLE 24 - EQUIPMENT PREFERENCE

The engineers, or crew, assigned to a piece of equipment shall be given preference when this piece of equipment is required to do work on regular work days, Saturdays, Sundays, Holidays or other overtime. Said machine shall set idle at least three work days before being re-assigned.

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 operating engineer who was told not to report to 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. This does not apply in case of an emergency.

When an employee registers at the Referral Office, such employee shall be considered terminated by his former Employer.

ARTICLE 25 - CHANGING MACHINES

On all heavy industrial and heavy building work, such as factories; oil refineries; power plants; chemical plants; water, oil, gas and chemical tanks; flood control projects and levees; coal gasification plants; etc., any employee may be changed by the Employer from any machine listed herein to another machine, back to his original machine that isn't assigned to another employee, provided that no more than one (1) such change shall be made during any work shift and provided the employee is capable of performing the work.

On all other types of work, the Employee may not make more than one (1) complete change of equipment during the first half of any shift, and not more than one (1) additional complete change during the second half of any shift, provided that no operator may be required to operate more than three (3) pieces of equipment in any one (1) complete shift. A complete change is defined as moving from an original machine, to another machine, and back to the original machine.

On all types of work, wherever such changes in equipment are made, the higher rate shall prevail for the full day's work.

ARTICLE 26 - COMBINATION RATE

An engineer is permitted to operate two to four pumps, or a small mixer and a pump, or two to four welding machines, or one to five mechanical heaters, or any combination of the above mentioned machines so long as the machines are not over three hundred (300) feet apart overall, at the combination rate.

An operator shall be permitted to operate one throttle valve at the combination rate.

Combination rate shall mean premium pay of one dollar (\$1.00) per hour above the basic hourly rate of pay.

It is understood and agreed as follows: When one air compressor, or one pump, or one welding machine or one conveyor is to be put into operation for a period of no longer than a total of four hours during any one work shift and an oiler (Apprentice Engineer) is employed on the job, the oiler (Apprentice Engineer)

may operate the one machine for the period (four hours or less) at the combination rate. When there is no oiler (Apprentice Engineer) on the job an engineer shall be employed to operate any of the mentioned machines of Article 26, paragraph 1, regardless of the amount of time the machine is to be operated. Where more than one of the mentioned machines of Article 26, paragraph 1 are operated, an engineer shall be employed to operate the machines at the combination rate. The oiler (Apprentice Engineer) is not permitted to operate when more than one machine is in operation.

ARTICLE 27 - PAYMENT OF WAGES

The Employer shall pay once each week not later than six days after the end of the regular work week. The pay shall be in full up to the regular quitting time of said pay week. The pay shall be in cash or check as is mutually agreed upon by the Employer and the Union. The employer may pay by Direct Deposit to a bank of the employee's choice with written authorization from the employee.

When an employee is laid off, he shall be paid in full at the payroll office on the job site, or by check mailed within twenty-four (24) hours, providing there is no payroll office set up on the job site, unless other arrangements are made at the pre-job conference. Employees who are discharged for just cause or who voluntarily quit of their own accord shall be paid in full at the close of the regularly scheduled payroll period in which they were terminated. Any employee shall receive two (2) hours additional pay for every day, excluding weekends and holidays that his check is late. If an employee is required to come back to the job site to pick up his check, he shall receive two (2) hours pay for doing so.

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 this Agreement.

ARTICLE 28 - COMFORT, CONVENIENCE & SAFETY

The Employer shall furnish to the employees fresh iced water and individual drinking cups at the job site, sanitary facilities and provide an adequate amount of water to keep the dust down.

The Employer shall provide suitable shelter to protect the employees from falling materials and inclement weather, such as hard hats, winter fans, heat housers, umbrellas, roll bars, and safety equipment required by law, etc.

Employees are required to furnish their own rain suits and boots and shall be held responsible for all tools and equipment issued to them.

Employees are required to furnish a crescent wrench, pliers, screw driver, and such tools as necessary for minor adjustments.

ARTICLE 29 - TRANSPORTING EQUIPMENT

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

ARTICLE 30 - TRANSPORTATION OF EMPLOYEES

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 the job site or to power lines or pipelines he shall provide safe and suitable transportation.

ARTICLE 31 - 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 owners safety rules and regulations.

ARTICLE 32 - INJURIES AND FIRST AID

The Employer shall maintain adequate first aid kits on all jobs where employees covered by this Agreement are employed.

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

In case injury sustained by an employee in the course of employment requires 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, he shall be paid for all 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 hours or less for further treatment of such injury.

In case of injury sustained by an employee in the course of employment, the Employer shall furnish to the Business Manager of the Union a copy of the report which he files with his insurance carrier.

ARTICLE 33 - EMPLOYEES' RIGHTS

It is agreed that it will not be a violation or breach of this Agreement if any employee covered herein refuses to cross a picket line or refuses to enter the premises of an Employer or Contractor, if such refusal does not constitute a violation of Sub-section 303 (a) of the Labor Relations Act, 1947.

ARTICLE 34 - PRE-JOB CONFERENCE

Every Employer who is or becomes Party to this Agreement shall notify the Business Manager or Representative of the Union prior to the performance of any work properly coming under the jurisdiction of the Union, and the Employer shall inform the Business Manager or his Representative of the nature and classifications of Operating Engineers estimated to be required on the said project. The Employer shall meet with the Business Manager or Representative of the Union at a date, time and place mutually agreeable for the purpose of holding a pre-job conference. Any questions concerning the application of this Agreement shall be resolved at such pre-job conference and the Employer shall make arrangements for the referral of engineers to the project in accordance with the contractual referred provision. All pre-job conferences shall be reduced to writing and signed.

ARTICLE 35 - BONDING

Section 1. Every Employer who employs members of the Union and agrees to be covered or maintain the provisions of this Agreement may be required by the Union to give a surety bond payable to the International Union of Operating Engineers Local Union 841 Fringe Benefit Funds to insure the payment of fringe benefit obligations accruing under this Agreement. The Employer shall furnish a surety bond within fourteen (14) days after notice from the International Union of Operating Engineers Local Union 841 Fringe Benefit Funds that such is required. The amount of the surety bond may be up to \$50,000.

Section 2. The Fringe Benefit Funds may require an Employer to give the surety bond provided for herein if at any time: (1) the Employer has been late fifteen (15) days or more in the payment of any of its monetary obligations under this Agreement; or (2) the Employer has been late in the payment of any such obligation two (2) consecutive times during the immediately preceding twelve (12) months; or (3) the Employer has not worked within the Union's geographical jurisdiction under this Agreement during any of the immediately preceding twelve (12) months.

Section 3. When a surety bond is demanded, the Employer will obtain such from a company acceptable to the Fringe Benefit Funds, and the benefit funds specified in this Agreement shall be the sole beneficiaries of the bond. The bond will be given to the Fringe Benefit Funds where it will be kept.

Section 4. Should an Employer fail or refuse to provide the required surety bond, when such is demanded by the Union, or should an Employer fail to keep a bond in effect at all times said Employer is required to have one, the Union shall have the right to strike and/or picket, after notice, and use all other legal and/or economic means to cause the Employer to comply with this Article.

ARTICLE 36 - REFERRAL OF APPLICANTS

Section 1. When the Employer performs work covered by this Agreement in the area covered by Local Union No. 841 the following shall apply:

The Employer will obtain all employees through the Referral Offices of the Union in accordance with the non-discriminatory provisions governing the operating of the Union's Referral Offices as set forth in full herein:

Hiring Procedures. When an Employer calls a Referral Office for men they shall be referred in a non-discriminatory manner as follows:

Satisfactory and competent men will be furnished in accordance with the provisions of this Agreement and the Regulations governing Referral Offices, Section B of this Agreement, within twenty-four(24) hours of the time they are requested if they are available and if for any reason they cannot be or are not furnished within such period, the Employer may employ any person but shall notify the Referral Office within twenty-four (24) hours of the commencement of such Employment.

When an Employer needs key men there shall be a pre-job conference at which the classification to be filled by such employees, and the number of employees in each classification and the times of the commencement of their employment or the operational stages of the job or project

at which their employment shall commence, shall be determined. Thereafter upon written request of an Employer, signed by a representative of the Employer on a job or project and delivered to the Referral Office servicing such job or project stating that such Employer desires that a named person or persons be referred in a classification or classifications agreed to at such pre-job conference, such person or persons shall be referred without regard to the provisions of Article 36, Section 2, (A), (B) & (C) of this Agreement and the Employer shall hire such person or persons so referred.

In the event no person with the requisite experience is available, the Employer ordering such person shall not be free to hire directly a person to operate such piece of equipment or perform such work who has had less experience than the experience called for in the order.

Section 2. Regulations Governing Referral Office. For the purposes of this Article only the following Referral Offices for referral to Employer for jobs in the area covered by this Agreement shall be recognized.

Referral Office No. 1 - located at 6801 South
U.S. Highway 41, Terre Haute, Indiana Phone 812/299-1177

Referral Office No. 2 - located at 1602 Main
Street, Vincennes, Indiana Phone 812/882-9508

Referral Office No. 3 - located at 616 South
Oakwood, Oakwood, Illinois Phone 217/354-4858

Section 3. Each Referral Office shall maintain the following lists on which persons not currently employed in the highway, general building and heavy construction industry may register for referral at any time during normal business hours at that Referral Office. No person shall be allowed to register out of work if they have not been laid off.

A. List 1 is for persons not currently employed, who are seeking active employment, i.e., each Operating Engineer who has worked as an Operating Engineer for an employer and/or employers on work as defined in Article 4 of this Agreement within the Local's territorial jurisdiction for a period of four (4) years, i.e., forty-eight months (48) or more preceding this registering for referral.

B. List 2 is for persons not currently employed, who are seeking active employment, i.e., each Operating Engineer who has worked as an Operating Engineer for an employer and/or employers on work as defined in Article 4 of this Agreement within the Local's territorial jurisdiction for a period of less than four (4) years, i.e., forty-eight months but more than one (1) year, i.e., twelve months (12) preceding this registering for referral.

C. List 3 is for persons not currently employed, who are seeking active employment, i.e., each Operating Engineer who has worked as an Operating Engineer for an employer and/or employers on work as defined in Article 4 of this Agreement within the Local's territorial jurisdiction for a period of less than one (1) year, i.e., twelve (12) months preceding this registering for referral.

D. List 4 is for all other persons seeking active employment.

E. Separate lists shall be kept for Apprentices and on the same basis as for the Operating Engineers.

F. An Employee, who while employed or a person registered for Referral:

a. becomes incapacitated by reason of injury or disease arising out of and in the course of employment on the type or kind of craft work of Operating Engineers shall for all purposes of this Article 36 be considered employed or available for employment for the full period of incapacity, or

b. become incapacitated by reason of injury or disease not arising out of and in the course of employment on the type or kind of craft work of Operating Engineers shall for all purposes of this Article 36 be considered employed or available for employment until:

1. he is paid in full and laid off, or
2. he registers for employment with the Referral Office.

Section 4. No person seeking active employment may register for Referral as an Operating Engineer and an Apprentice at the same time.

Section 5. All persons seeking to register for active employment shall be responsible for calling the referral office, or offices, personally and setting forth their names, address and telephone number and classifications of work sought and their experience therein and may change such classification or classifications at any time before being referred.

Section 6. In referring, each Referral Office shall refer those on List 1 in accordance with their registered out of work date so long as there are any in the classification called for by the Employer who are registered and available for work and thereafter those on List 2 in accordance with their registered out of work date so long as there are any in the classification called for by the Employer who are registered for work and thereafter those on List 3 in accordance with their registered out of work date so long as there are any in the classification called for by the Employer who are registered and available for work and thereafter those on List 4 in accordance with their registered out of work date so long as there are any in the classification called for by the Employer who are registered and available for work.

Section 7. Subject to Section 8, A and B, Section 9 A through C; and Section 11 of this Article 36, all registrants on Lists 1 through 3 shall be referred in accordance to their registered out of work date. Such registrant having the right to submit any dispute to the Appellate Tribunal established in accordance with Section 13 of this Referral Procedure. The name of a registrant so referred shall be stricken from the list if the job to which the registrant is referred lasts ten (10) calendar days. However, if employee quits without just cause, that employee will go to the bottom of applicable list forfeiting his or her right to the ten (10) calendar day rule.

Section 8. All persons on List 1 and List 2 regardless of anything in these Regulations to the contrary:

- A. The contractor may request, by name, the referral of any Operating Engineer who is registered for employ-

ment, and the Union shall make such referral, provided, said individual has been employed as an Operating Engineer by the requesting contractor within eighteen (18) months and said individual has been on the referral list at the union office for five or more calendar days.

B. In the event the named person is not registered or not available for work at the time of the receipt of a written request under this Section 8, A and/or Section 9, A and B, the Referral Office shall so notify the Employer as soon as possible, and the twenty-four (24) hour period provided in Section 1, A shall not commence to run until receipt by the Referral Office of either a request for an unnamed qualified registrant by classification or a further request under this Section 8, A and/or Section 9 A and B for a named person who is registered and available for work at the time of the receipt of the written request.

Section 9. All persons on List 3 and 4 shall be referred in accordance with their registered out of work date, and when referred, their names shall be stricken from the list, provided however, that upon written request of a signatory Employer, signed by a representative of the Employer on a job or project and delivered to the Referral Office embracing such job or project stating that such Employer desires, on the basis of past satisfactory service, that a named List 3 or 4 registrant be referred to such job or project, such Referral Office shall refer such List 3 or 4 registrant only after the following conditions have been met:

A. No employee shall be laid off or discharged to make room for such person.

B. The Employer shall not request a List 3 or 4 registrant unless he has in his employ four (4) or more persons classified as Operating Engineers working in the area covered by this Agreement, provided said registrant was last employed as an Operating Engineer by the requesting Employer, and said registrant has been on the referral list for five (5) or more calendar days, and provided said registrant was employed as an Operator by the requesting Employer within eighteen (18) months preceding the Employer's request.

C. In the event the named person is not registered or not available for work at the time of the receipt of a written request under this Section 9, A and B, the Referral Office shall so notify the Employer as soon as possible, and the twenty-four (24) hour period provided in Section 1, A shall not commence to run until receipt by the Referral Office of either a request for an unnamed qualified registrant by classification or a further request under this Section 9, A and B for a named person who is registered and available for work at the time of the receipt of the written request.

Section 10. An Employer may transfer an employee to a jointly owned Company, provided he notifies the Referral Office prior to the transfer.

A. When an individual Employer rents or leases equipment, an employee of the lessor operating the equipment may be transferred to the payroll of the lessee, but shall be

considered an employee of the lessor for the purpose of these non-discriminatory hiring procedures, provided, such employee has been referred in accordance with these non-discriminatory hiring procedures and shall have been in the employ of the lessor, or a lessee of the lessor, for the five (5) working days next preceding the date of the rental of the equipment, and the Referral Office servicing the job or project on which such equipment is to be used is notified in writing by the lessee before twelve o'clock noon of the day prior to the first day such equipment is to be used on the job or project, and provided further, that such employee's employment by the lessee shall terminate upon the termination of the lease or rental of the equipment or replacement.

Section 11. The Employer may reject any registrant referred by a Referral Office for employment, the Employer having the sole right of hiring.

Section 12. Upon being referred, the registrant shall proceed to the job at once. When call is made to a Referral Office for men to report to work on day of request a reasonable time shall be allowed for men traveling from the Referral Office to job site as agreed by the Referral Office. A registrant who fails to report for work when referred on the shift to which referred or within the time agreed to if referred to work on the day of request without good cause therefore shall not be eligible for referral for seven (7) days thereafter. When a registrant is requested by Employer to be referred on the day of request, and the registrant referred does report for work that same day, he shall be paid for his full shift if he reports during the first half of the shift and works the balance of the shift or for the half shift, if he reports during the second half of the shift and works the balance of the shift.

Section 13. In the event any job applicant is aggrieved with respect to the operation of this Referral Procedure he may, within ten (10) days following the occurrence of the event which constitutes the basis for the grievance, file with the Referral Office a written statement setting forth the grievance charged. Forms for the submission of such grievance shall be available at Referral Offices. An Appellate Tribunal shall be established consisting of a Representative of the Union, the Employer and an Impartial Chairman appointed jointly by the Union and the Employer. The Union and the Employer will each appoint their representative within two days after the grievance has been filed, and these two Representatives, within two days after their appointment will appoint the Impartial Chairman. The Tribunal will then meet and render a decision within ten (10) days and such decision shall be final and binding on both parties.

Section 14. The Union and the Employer and each Referral Office of the Union in carrying out the provisions of this Agreement with respect to Article 36 of this Agreement and the registration and referral of persons seeking active employment, will not discriminate either in favor of or against such registrants, or persons seeking to register by reason of membership in or non-membership in any Union, nor shall the carrying out of the provisions of this Agreement with respect to Referral (Article 36 of this Agreement) and the registration and referral of persons seeking active employment 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. The Employer shall not discriminate either in favor or against persons seeking active employment or any of them by reason of membership or non-membership in any Union or by reason of acting on behalf of or in

opposition to any Union.

Section 15. An employee who, while employed on the type or kind of craft work of Operating Engineers, or who was or is transferred by an Individual Employer to a job or project outside the area covered by this Agreement, and was or is there employed by such individual employer or by a Joint venture with which said individual employer is associated on the type or kind of craft work covered by this Agreement, shall for all purposes of this Article 36 be considered to have been employed or registered for employment in the area covered by this Agreement for the period of such services outside of the area covered by this Agreement.

Section 16. The Union recognizes its obligations and therefore assumes full responsibility to each applicant for any loss or damage resulting from any such discrimination or other violation of law by the Union in its operation of the Referral Offices.

In the event the Union or the Employer uses the Referral Procedure for the purpose of coercing the Employer and employees then an Employer can file a written complaint with the Union which complaint will be subject to the Grievance and Arbitration Procedure as set forth in Article 38 of this Agreement.

In the event an Arbitration Board so set out in Article 38, find that the Local Union involved was in violation of this Section with any one Employer, thereafter that Employer involved may resort to any course that he may choose for the recruitment of needed employees, and that Local Union shall not have preferential rights for the referral of employees to this Employer throughout the remaining time of this Agreement, or during the time the Employer remains in the area of the Local Union involved.

It is understood and agreed that this Article does not alter or waive any of the rights of the Local Union in the event an Employer violates the basic collective bargaining Agreement.

Section 17. The Employer shall be the sole judge of, and have the right to determine the number of employees required on any job, or any portion of the work being done by the Employer. There shall be no restriction as to the use of machinery, tools or appliances, however, this Article and Section shall not in any way alter, suspend or nullify any of the provisions previously established in this Agreement.

Section 18. All provisions of this Referral Procedure shall be posted in places where notices to employees and applicants for employment are customarily posted.

ARTICLE 37 - JOB STEWARDS

A. The Business Manager or Business Representative of the Union may select an employee on each shift in operation on a job or project to serve as Job Steward.

a. In addition to his regular assigned work, the Job Steward shall be permitted to perform, during working hours, the duties set forth in B of this Article. The Union agrees that such duties shall be performed as expeditiously as possible, and the Employers agree to allow Job Stewards a reasonable amount of time for the performance of such duties.

b. The Business Manager or Representative of the Union shall notify the Employer or his Representative, in writing,

of the appointment of Job Steward and the Employer shall notify the Union of his termination.

B. The Job Steward shall be limited to and shall not exceed the following duties and activities.

- a. Check the referral of each employee referred under the terms of this agreement to his Employer before such employee commences work or as soon thereafter as practical.
- b. Report to his Business Manager or Representative all violations of this agreement.
- c. Report to his Business Manager or Representative any employee covered by this agreement who, during his shift, leaves the job site without giving the Employer and the Job Steward prior notice.

C. The Job Steward shall not:

- a. Stop the Employers work for any reason.
- b. Tell any worker, or any employee covered by this agreement, that they cannot work on the job.

D. Infraction of either of the two rules set forth in C above shall be cause for immediate dismissal of the Job Steward without any prior notice.

ARTICLE 38 - ARBITRATION AND DISPUTES

There shall be no work stoppage on account of any difference of opinion or dispute as to the proper interpretation and/or application of this Agreement. Any dispute shall be handled in the first instance by a representative of the Union and a representative of the Employer, and if they fail to reach a settlement within five (5) work days, it shall be referred to a Board of Arbitration composed of one (1) person appointed by each Party the two (2) so appointed to select a third member. In the event the two (2) so appointed arbitrators are unable within two (2) work days to agree upon the third member, they shall jointly request the Federal Mediation and Conciliation Service to furnish a panel of five (5) names from which the third member shall be selected. The decision of the Board of Arbitration shall be handed down within two (2) work days after the selection of a third member and the decision of the Board of Arbitration shall be final and binding upon both Parties.

The Board of Arbitration shall have jurisdiction over all questions involving the interpretation and application of any section of this Agreement. It shall not, however, be empowered to enter negotiations for a new Agreement, changes in the wage scale or jurisdictional disputes.

Disputes may arise of a nature so general as directly to affect all or a major portion of the employees or the employers. In such an event, the Union or the Building Division - ICA, Inc. and/or the Employers signatory to this Agreement, may invoke the grievance procedure above. It is agreed that disputes of this nature need not be subjected to the entire grievance procedure but may be initiated by either Party at a step prior to arbitration, deemed appropriate by the Party bringing the grievance.

Each Party shall individually pay the expenses of the arbitrator it appoints and the two Parties shall jointly share the

expense of the third arbitrator.

This Article 38 shall be of no force or effect and there is excluded from the provisions of this Article 38 all differences of opinion, all disputes and all grievances arising out of the provisions relating to Employer payment or non-payment to Health and Welfare, Pension, and Apprenticeship & Training Funds and this Article 38 shall be of no force or effect with respect to such differences of opinion, disputes or grievances, and there is excluded from the provisions of this Article 38 all differences of opinion, disputes and grievances arising out of the payment by an Employer of an employee by a check, draft or money order which is not honored by the payee for any reason or which is honored by the payee at less than par.

If an 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.

ARTICLE 39 - JURISDICTIONAL DISPUTES

The parties hereto agree that in the event of a jurisdictional dispute with any other union or unions, the dispute shall be submitted to the National Joint Board for settlement of Jurisdictional Disputes for settlement in accord with the plan adopted by the Building Trades Department of the AFL-CIO. The Parties hereto further agree that they will be bound by any decision or award of the Joint Board. There shall be no stoppage of work or slowdown arising out of any such dispute.

ARTICLE 40 - WORKER'S COMPENSATION

The Employer shall carry Worker's Compensation Insurance in a Company or an Association authorized under applicable State Laws and regulations to insure the liability to pay compensation under Worker's Compensation laws.

ARTICLE 41 - UNEMPLOYMENT COMPENSATION

The Employer shall make all contributions required under the Indiana Unemployment Compensation Act. Whenever an Employer shall not be subject to the provisions of such Act because of the number of employees in the employing unit, he shall nevertheless, pursuant to the provisions of said Act, make election to be subject thereto.

ARTICLE 42 - DISCRIMINATION

There shall be no discrimination by the Employer or his Representative against any Steward representing this Local Union on a job, or any officer of this Local Union on a job, or any officer of this Local Union who may be serving on a committee authorized by the Union. Stewards shall not leave their duties during working hours unless in case of dire necessity unless requested to do so by the Employer or his Representative or a Business Representative of the Union.

There shall be no discrimination by any Employer or the Union by reason of race, creed, color, sex, national origin, handicap or veterans status and the Employer and the Union will comply with all applicable laws and regulations, both State and Federal, provided however, that nothing herein listed above set out shall require the Employer or the Union to violate any provisions of the National Labor Relations Act and any Amendment or Amendments

thereto.

Whenever any words are used in this agreement in the masculine gender, they shall also be construed to include the feminine or neuter gender in all situations where they would so apply. Whenever any words are used in the singular, they shall also be construed to include the plural in all situations where they would so apply and whenever any words are used in the plural, they shall also be construed to include the singular.

ARTICLE 43 - AFFIRMATIVE ACTION

The Employer and Union agree to adopt and embrace the affirmative action program executed under provisions of Executive Order 11246 and regulations issued under Chapter 60 of Title 41 of the Code of Federal Regulations Revised; an affirmative action program to implement all provisions of applicable federal regulations to assure non-discrimination in employment, upgrade, demotion or transfer, and recruitment advertising; layoff or termination rates of pay and selection for all types of training.

ARTICLE 44 - CONCEDED WORK

The Union shall not concede any portion of the work herein defined to any other craft or organization without first securing the written consent of a duly authorized Representative of the Employers, and no individual Employer shall concede any portion of the work herein defined without first securing the written consent of the Union.

ARTICLE 45 - SAVINGS CLAUSE

Any provision contained here 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 effected 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.

ARTICLE 46 - CONSTRUCTION ADVANCEMENT PROGRAM OF CENTRAL INDIANA (CAPCI)

Section 1 - Each Employer agrees to contribute to an industry advancement fund created and maintained by the Building Division - ICA, Inc., or to a successor fund approved by the industry advancement fund committee (collectively "Fund"), SIX CENTS (\$0.06) per hour for each hour worked by each Employee working under this Agreement. From time to time, the hourly amount may be adjusted to no less than five cents (\$0.05) per hour to a

maximum of ten cents (\$0.10) per hour worked, provided that a minimum of two months notice is provided prior to the effective date of the change in contribution rate.

Section 2 - The contribution to the Fund shall be deposited by the 15th of each month, or at such other regular intervals as may be determined by the Fund committee, to the depository designated by the fund directors and such contributions shall be reported on such forms as are designated by the Fund committee.

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

Section 4 - The Employer hereby agrees that the designated representative of the Building Division-ICA, Inc., or the Fund 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 attorneys' fees, incurred by the Building Division - ICA, Inc. and/or the Fund. It is further understood that such Employer shall be obligated to pay any delinquent contributions to the Fund 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 the Fund.

ARTICLE 47 - SUBSTANCE ABUSE TESTING PROGRAM

By mutual agreement, language for Substance Abuse Testing Program will be added as an Addendum to the Agreement at a later date.

ARTICLE 48 - DURATION, TERMINATION

The provisions of this Agreement shall be in full force and effect beginning the first day of April, 2009 until the thirty-first day of March, 2011. If either Party to this Agreement desires a change in this Agreement or to terminate this Agreement they shall notify the other Party in writing by registered mail of such desire during the month of January, 2011. If such written notice is not properly given, this Agreement shall continue in full force and effect each year thereafter until such notice is given.

This agreement may be reopened 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 Building projects.

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 the 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 economic and legal options, including but not limited to, strike or lockout.

Notices hereunder shall be deemed to have been adequately given if served upon the persons named below at the address indicated:

Notices to the Union shall be addressed to:

International Union of Operating
Engineers, Local No. 841
6801 S U.S. Highway 41
PO Box 2157
Terre Haute, Indiana 47802
Attn: Business Manager

Notices to the Contractors shall be addressed to:

Building Division - ICA, Inc.
One North Capitol, Suite 1000
Indianapolis, IN 46204
Director of Labor Relations

In witness whereof, the Parties hereto have caused this Agreement to be approved, ratified and signed by the duly authorized officers of the Parties hereto.

Signed this _____ day of _____, 2009.

**INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL UNION NO. 841**

BUILDING DIVISION - ICA, INC.

Business Manager

Director of Labor Relations

Chairman, Committee

Party of the First Part "Employers"

MK Betts Engineering & Contracting, Inc.
Bowen Engineering Corporation
Bruns-Gutzwiller, Inc.
Deig Bros. Lumber & Construction Co., Inc.
Edwards Concrete Construction, Inc.
Far West Construction, Inc.
Hannig Construction, Inc.
Kreager Bros. Excavating, Inc.

JC Ripberger Construction Corporation
ST Construction, Inc.
Sterling Boiler & Mechanical, Inc.
Weddle Bros. Building Group, LLC

MEMORANDUM OF UNDERSTANDING

MARKET RECOVERY AGREEMENT

THIS AGREEMENT is made and entered into by and between **INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL NO. 841 (Union)** and **BUILDING DIVISION - ICA, INC. (Association)** hereinafter referred to as the Parties, for the purpose of making the contractors signatory to this Agreement more competitive in a market that is now beyond realm of possibility and to create added

jobs for the unemployed members of International Union of Operating Engineers Local No. 841.

It is agreed the wage rate for work being performed and defined in Group 1 of Article 7 of the Indiana Building Agreement (Agreement) negotiated by and between the Parties shall be as mutually agreed to by the contractor and the Union, on a project-by-project basis.

It is further agreed that the Union, at their discretion, may instead offer financial assistance, based on estimated man hours and/or other criteria, on certain projects falling within the scope and intent of this Memorandum of Understanding.

This Memorandum of Understanding does not include projects having a pre-determined wage setting. However, on certain projects deemed to be advantageous by both parties to do so and with notice to the Union, by mutual consent of the Parties, said project may be within the scope and intent of the Agreement.

Provided that if a Market Recovery Agreement is reached between the Association and any other craft performing work on said project then the percentage rate paid to the Operating Engineers covered by this Memorandum shall be not less than that paid to any other craft. The Union may cancel this Agreement as to a particular contractor if in its sole judgment the Union believes the said contractor has violated or abused this Agreement. Provided further, should difference of opinion arise pertaining to work covered by this Memorandum of Understanding, difference of opinion shall be settled in accordance with Article 38 (Arbitration & Disputes) of the Agreement. All other terms and conditions of the Agreement shall apply.

This Agreement shall not apply to projects already in progress nor to projects having been bid prior to signing of same. It is agreed this Agreement shall be subject to review on or before March 31, 2010, by a Committee of 6, 3 being from International Union of Operating Engineers Local 841 and 3 being from the Building Division - ICA, Inc. for the purpose of determining the value and effectiveness of said Agreement. If it is determined by the Committee this Agreement has not been effective in making the signatory contractors more competitive in this Market Place and produced more employment for the members of International Union of Operating Engineers Local 841, then this Agreement may be revised for the purpose of making it more effective or it may be cancelled April 1, 2010. If proven effective, then these conditions shall be extended from year to year subject to Committee review and recommendations on or before April 1 of each succeeding year. It is also suggested this Committee meet each 4 months of this Agreement for discussion and evaluation.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be approved, ratified and signed by the duly authorized officers of the Parties hereto.

FOR THE UNION:

**INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL NO. 841**

FOR THE EMPLOYERS:

BUILDING DIVISION - ICA, INC.

Business Manager

Director of Labor Relations

Chairman, Committee