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Title: **Wheeler Construction, Inc. & Construction 70, Inc. and International Union of Operating Engineers, AFL-CIO, Local 428 (2005)**

K#: **8064**

Employer Name: **Wheeler Construction, Inc. & Construction 70, Inc.**

Location: **AZ**

Union: **International Union of Operating Engineers (IUOE), AFL-CIO**

Local: **428**

SIC: **1611**

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K8064

ARTICLES OF AGREEMENT

CONSTRUCTION INDUSTRY

between

WHEELER CONSTRUCTION, INC. & CONSTRUCTION 70, INC.

and

OPERATING ENGINEERS LOCAL UNION NO. 428

Term of agreement: June 23, 2005 to May 31, 2008

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PREFACE

This Agreement, entered into the tenth day of June, 2002 by and between WHEELER CONSTRUCTION, INC. CONSTRUCTION 70, INC.; and any other INDIVIDUAL CONTRACTORS, members or non members, who are signatory hereto by memorandum and/or addendum and hereinafter referred to as "Employers", and the OPERATING ENGINEERS LOCAL UNION NO. 428, of the International Union or Operating Engineers, AFL-CIO, hereinafter referred to as the "Union.

PURPOSE

It is the intent of the parties to set out uniformly standard working conditions for the efficient performance of construction in Arizona, herein to establish and maintain harmonious relations between all parties to the Agreement; to secure optimum productivity, and to eliminate strikes, lockouts or delays in the performance of the work undertaken by the Employer.

ARTICLE I
COVERAGE OF AGREEMENT

101 - Employees Covered. This agreement shall apply to all employees of the Employer employed to perform or performing heavy and highway construction work, which work is within the Union's recognized jurisdiction as defined by the Building and Construction Trades Department of the AFL-CIO and/or area practices. This agreement shall not apply to the Employer's executives, superintendents, assistant superintendents, civil engineers and their helpers, master mechanics, all supervisory employees such as timekeepers, messengers, guards and office workers.

102 - Work Covered. For purpose of this agreement, heavy and highway work shall include the construction, modification, overhaul, repair, improvements and construction of incidental structures or operation; on work including, but not limited to highways, streets, bridges, sewers, viaducts, storm drains, elevated highways, irrigation, drainage and flood control projects, pipelines, tunnels, shafts, aqueducts, canals, reservoirs, railroads or subways, power plants, refineries, airports, and factories, as well as all excavation on, grading and similar operations which are incidental thereto.

103 - Management Rights.

103.1 - The Employer retains and shall exercise full and exclusive authority and responsibility for the management of its operation.

103.2 - 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 for employees covered by this Agreement.

103.3 - 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. Employees may be shifted from one (1) piece of equipment or operation to another as job conditions require.

103.4 - The selection of master mechanics, general foremen shall be entirely the responsibility of the Employer.

104 - Competitive flexibility

104.1 - Other Contractor's Rates. In no event shall the Contractor be required to pay higher rates of wages, or be subject to more unfavorable working rules than those established by the Union for any other Contractor engaged in similar work in Arizona. However, the Crane Rental Agreement and project agreements shall not be considered as doing "similar work", and accordingly, the first sentence in this paragraph shall not apply to such agreements, provided Contractor has the opportunity to sign all such agreements. No project agreement with more favorable conditions than those specified in this agreement will be given to any contractor doing similar work without first being given written notice to the respective employer association at least 60 days prior to the bid date of the project in question.

ARTICLE 2

PREVAILING RATES

201 - Prevailing rates are those rates listed in the Federal Davis-Bacon Specifications. However, if the Davis-Bacon rates are lower than the rates in this agreement, then the rates of pay in this agreement at the time a job or project is bid shall be the rates paid on that job or project until its completion. If applicable, after eighteen (18) months on affected projects, Article 2, Section 201, can be re-opened to evaluate the economics of the projects, by either party through written notice.

ARTICLE 3
SUBCONTRACTOR COVERAGE

301.1 - In the event the Employer subcontracts out any work covered by this agreement, signatory subcontractor on the Union's list, if any are suitable and available, will be afforded the opportunity to submit a bid to perform the work. The Union will provide the Employer a list of signatory contractors and maintain it current.

301.2 - In instances where union subcontractors are not suitable and available, or their bid is not competitive, the Employer is not restricted from awarding the work to any available subcontractor.

ARTICLE 4
MARKET RECOVERY

401 - Market/Geographic Area Committee. The parties to this Agreement recognizes the constantly changing nature of the industry with respect to certain market and/or geographic areas and the necessity of the individual employers to maintain competitive positions in those areas in order to protect and assure the continued work opportunities of the employees covered by this Agreement. Therefore, the parties hereby establish a Market/Geographic Area Committee composed of one (1) representative of the Employer and one (1) representative of the Union. The committee shall evaluate market or geographic area requests for changes or modifications believed necessary to meet competition and determine if adequate economic justification is present to support such a change or modification.

ARTICLE 5
CONTRACT SCOPE, MODIFICATIONS AND LIMITATIONS

501 - Limited Liability. Any breach of this Agreement by a party hereto shall not operate as a violation of this Agreement by any other party hereto.

502 - Reparability. It is expressly agreed that in the event any provisions hereof be declared to be invalid by any court of competent jurisdiction, such invalidity shall not affect remaining terms and provisions, which shall remain in full force and effect.

503 - Qualifications of Agreement.

503.1 - Each of the parties hereto warrants and agrees that it will not take any action that will prevent or impede it in the full and complete performance of all conditions hereof.

503.2 - This Agreement shall supersede any and all prior Agreements between the parties signatory hereto covering the work described in Article I hereof.

503.3 - This Agreement is complete and has resolved all collective bargaining issues between the parties for its duration except as defined in this Agreement.

ARTICLE 6
TERM, TERMINATION AND RENEWAL

601 - Effective Date. It is further agreed that the classifications, wage rates and working rules contained herein shall be applicable in the area for work covered by this Agreement and shall be effective on June 22, 2005 or as otherwise specifically indicated.

602 - Length of Agreement. This Agreement shall remain in effect from the date of June 23, 2005 through May 31, 2008. Either party desiring to terminate the Agreement or to change its terms shall notify the other in writing not more than one hundred twenty (120) days, nor less than sixty (60) days prior to May 31, 2008. If such notice is not given, this Agreement shall be renewed for the period from June 1, 2008 through May 31, 2009, and from year to year thereafter until terminated at the end of a yearly period by such notice in writing by either party given to the other not more than one hundred twenty (120) days, nor less than sixty (60) days before the end of such yearly period.

ARTICLE 7
JURISDICTIONAL DISPUTES

701 - The Employer will use his best construction judgment in the assignment of work. There shall be no cessation or interference in any way with any work of the individual Employer by reason of jurisdictional disputes between an individual union and any other individual union affiliated with the AFL-CIO. Such disputes will be settled by the individual union and the other unions themselves. Craft jurisdiction is other determined or awarded by classifications or coverage descriptions appearing in this Agreement.

ARTICLE 8
NO STRIKE - NO LOCK OUT

801 - Work Stoppages and Lockouts. During the term of this Agreement and except as specifically provide herein, there shall be no strikes, picketing, work stoppages, slow downs or other

disruptive activities for any reason by the Union or by any employee, and there shall be no lockout by the Employer.

801.1 - The Union shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity at the Employer's project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the project shall be subject to disciplinary action, including discharge. 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.

801.2 - The Union and Employer agree that there shall be no strikes, lockouts or interruptions of the disputed or other work on the job over jurisdictional disputes.

801.3 - The Union will not recognize any picket lines established by other crafts for any type of grievance, jurisdictional dispute or contract expiration during the course of this Agreement, including those between owners and unions involving operation personnel.

801.4 - Should any unauthorized picketing occur, it shall be a violation of this Agreement for any employee to honor such pickets. The Employer shall have the right to take immediate action to ensure the continuance of affected work and/or shutdown any part or all of the work and such action by the Employer shall not be a violation of this Agreement.

801.5 - Any worker participating in an unauthorized strike, work stoppage, slowdown or work disruption may be terminated by the Employer.

801.6 - It shall not be a violation of this contract or an unfair practice, and it shall not be a cause for discharge of any worker or workers who refuse to cross a lawful primary picket line.

801.7 - Cessation or work by employees shall not be a violation of this Agreement if it is solely to protest any of the following exceptions to this Agreement.

801.7.1 - It shall not be a violation of this Article 8 if the Union withdraws the employees of the employer because of failure of said employer to pay wages or fringe benefits, failure to provide Workmen's Compensation or Unemployment Insurance.

801.7.2 - If the Employer or subcontractor fails to abide by the Agreement as determined by a final and binding award entered pursuant to the grievance and arbitration procedures provided for in this Agreement and up to the time of the final and binding award the complaining party or parties have afforded themselves of all remedies of the grievance procedures provided, however, that the Union expressly agrees that it will not engage in any but judicial action to secure the enforcement of any award finding a violation of paragraph 301 or 301.1 (Subcontractor Coverage).

801.73 - Where an employee or employees covered by the terms of this Agreement are not paid at all or are paid by a check which is returned or otherwise invalid.

801.7.4 - As those violations described hereinabove, the Union and employees involved may strike or picket the Employer, where not statutorily prohibited, or it may, in its discretion, or as an alternative, file grievances which shall in all respects be processed and decided in accordance with the established grievance procedure.

802 - Non-compliance with Grievance Procedure.

802.1 - If any such action prohibited to the Union in Paragraph 801 above occurs and the Union is responsible therefore, the Union shall be liable in money damage to the Employer thereby as determined by the grievance procedure provided for in Article 9 hereof.

802.2 - Nothing contained in this Agreement or any part thereof (except the provisions of Articles 301 and 801.3) shall affect or apply to the Union in any action the Union may take against the Employer who has filed, neglected or refused to comply with or execute any settlement or decision reached through the procedure for settlement of disputes under the terms of Article 9, hereof.

ARTICLE 9
PROCEDURE FOR SETTLING DISPUTES AND GRIEVANCES

901 - Contractual Disputes -
A grievance shall be defined to mean any dispute, controversy or disagreement as to the application in or interpretation of any of the terms and provisions set forth in this Agreement.

Step 1 - Any employee having a grievance shall, by himself or herself, or with the aid of a Union Representative, first take up the grievance with the Company, or its designated representative who shall attempt to adjust it. The grievance shall be submitted in writing as promptly as possible, and in no case in excess of ten (10) working days from the date of occurrence of the incident which led to the grievance. At this step the grievance shall be submitted in writing and contain details of the nature of the grievance and the Articles of the Agreement allegedly violated. The Company shall render its decision within two (2) working days after being presented with the grievance.

Step 2 - If the grievance remains unsettled, an authorized Union Representative shall be called in by the Union within two (2) working days after the decision of the Company. All time limits hereinafter may be extended by mutual consent. Participants in this step shall be the Union Representative and a Company Representative who shall have two (2) working days in which to settle the grievance.

Step 3- If the grievance remains unsettled, within fifteen (15) calendar days the parties shall engage in non-binding mediation. The mediator will be on the commissioners from the Arizona office of the Federal Mediation and Conciliation Service.

Step 4 - If no settlement or agreement is reached in Step 3, then within five (5) working days of the Step 3 meeting, the matter may be referred to arbitration. A request for arbitration shall be presented to the Company in writing and shall contain a complete outline of the nature of the complaint. Within ten (10) working days of receipt of a request for arbitration, the parties shall:

1. Meet to mutually select an arbitrator.

2. If unable to select an arbitrator at the meeting, then the moving party shall, within five (5) working days, request a panel of seven (7) arbitrators from the Federal Mediation and Conciliation Service.
3. Upon receipt of the panel of seven (7) arbitrators, each party shall strike three (3) names alternately with the remaining arbitrator authorized to hear the case.

No grievance shall be submitted to arbitration under Step 3 unless the time limits in Steps 1 and 2 have been complied with; any grievance submitted after the time limits have expired shall be forfeited and waived.

The arbitrator may not change, modify or alter any of the terms and provisions of the Agreement. The

findings of the arbitrator shall be rendered within thirty (30) days of the date of hearing and shall be binding and enforceable on all parties.

The expenses of the arbitrator and the hearing room shall be borne equally by both parties.

It is the intention of the parties that this Article shall provide a peaceful method of adjusting grievances and there shall be no suspension or interruption of normal operations as a result of any grievances.

All jurisdictional disputes shall be determined in the manner and by the procedure established by the International Disputes Settlement Plan between the International Union of Operating Engineers, the International Brotherhood of Teamsters and Laborers International Union.

ARTICLE 10
EMPLOYEE TERMINATION

1001 - No Discrimination. The Employer may discharge any employee for any cause which he may deem sufficient, provided there shall be no discrimination on the part of the Employer against any employee nor shall any such employee be discharged by reason of any union activity not interfering with the pr per performance of his work, nor because of race, creed, national origin, age or sex. (For rules governing discharge of job steward, see Article 16.)

1002 - Reference to Gender. All reference to employees in this Agreement designate both sexes and whenever the male gender is used, it shall be construed to include both male and female employees if applicable.

1003 - Termination Slips. The contractor shall furnish and complete termination slips for any employee who is terminated, showing the reason therefore, giving one (1) copy to the employee, returning one (1) copy to the dispatching hall at the time of termination, and retaining one (1) copy for the company's records. In those instances where a termination notice is marked "NOT FOR REHIRE", that employee shall not be re-referred by the same dispatching hall to the Employer, or the same job or project, within on (1) year of such termination date (unless called by name). In the event the Employer does not comply with this paragraph, the employee shall be considered eligible for rehire.

1004 - If an employer is delinquent In the payment of benefits to the Operating Engineers Local 428 trust funds, the employees working under this agreement can request and be granted a reduction in force from the delinquent contractor.

ARTICLE 11
INSURANCE, TAXES AND PAYROLL RECORDS

1101 - Insurance and Taxes. The Employer shall carry insurance, and pay appropriate taxes, as required by federal, state and local laws and/or regulations.

1102 - Payroll Records. The Employer agrees that each employee shall be given, with each check, a detachable statement showing the employee's name or identification number, straight time hours worked, overtime hours worked, payroll period covered, gross amount earned, social security tax, withholding tax and other deductions itemized. Employers found to have maintained incorrect payroll records for the purpose of avoiding proper wage payments, shall be considered in gross violation of the Agreement.

1103 - Employers name or logo should be shown on check stubs.

ARTICLE 12
HEALTH AND WELFARE

1201 - Amounts. Effective on the dates listed below, and monthly in accordance with the provisions of the trust agreement, the Employer bound to the collective bargaining agreement shall pay the sum indicated for each hour worked by employees covered under the provisions of this Agreement to the trustees of the Operating Engineers Local No. 428 Health and Welfare Trust Fund:

June 22, 2005 - $3.95
June 1, 2006 - $4.45
June 1, 2007 - $4.80
December 1, 2007 - $4.95

1201.1 - If additional monetary increases are deemed necessary, they will be designated by the Union as to dates and amounts, and will be taken from negotiated settlements. The Union can revise the economic package so long as the combined total of wages, health and welfare, pension, vacation savings and apprenticeship does not exceed the economic package figure. It is agreed that the Union will give the Company sixty (60) days advance notice, in writing, of proposed changes to the contribution rate.

1202 - Employer's Obligations. The said payments by the Employer shall discharge his obligation hereunder. Any dispute arising in the administration of said fund shall not be deemed to be a dispute hereunder and shall not be a subject matter of the grievance procedures contained in Article 9 hereof and shall not be deemed to be a dispute concerning wages, hours and working conditions, except as specifically provided in Article 9.

1203 - Declaration of Trust. The parties shall cause the said trustees to execute any and all document necessary and required to continue in full force and effect the Agreement and Declaration of Trust dated the 29th day of September, 1959, as amended thereafter, creating the said Operating Engineers Local No. 428 Health and Welfare Trust Fund, for the duration and term of this collective bargaining Agreement. A copy of the Agreement and Declaration of Trust dated the 29th day of September, *1959*, as amended is incorporated herein by reference. The Board of Trustees, as appointed, shall have equal voice in making all decisions concerning the Trust, including amendments of the Trust plan itself

1204 - The Employer signatory hereto agrees to the appointment, as his representatives, the trustees designated pursuant to the Agreement and Declaration of Trust of the Operating Engineers Local 428 Health and Welfare Trust Fund as Employer representatives and further agrees that they shall be bound by all the terms and conditions of said Agreement and Declaration of Trust dated September 29, 1959, and as amended thereafter, and to all amendments thereto during the term hereof.

ARTICLE 13
PENSION

1301- Amounts. Effective on the dates listed below, and monthly in accordance with the provisions of the Trust Agreement, the Employers shall pay the sum indicated below for each hour worked by employees covered under the provisions of this Agreement to the Trustees of the Operating Engineers Local No. 428 Pension Trust Fund:

June 22, 2005 - $2.90
June 1, 2006 - $3.03
June 1, 200 7- $3.30

1301.1 - If additional monetary increases are deemed necessary, they will be designated by the Union as to rates and amounts, and will be taken from the negotiated settlement. The Union can revise the economic package so long as the combined total of wages, health and welfare, pension, vacation saving and apprenticeship does not exceed the economic package figure. It is agreed that the Union will give the Company sixty (60) days advance notice, in writing, of proposed changes to the contribution rate.

1302- Employer's Obligations.

1302.1- The said payment by the Employer shall discharge his obligation hereunder. Any dispute arising in the administration of said fund shall not be deemed to be a dispute hereunder and shall not be the subject matter of the grievance procedures contained in Article 9, hereof, and shall not be deemed to be a dispute concerning wages, hours or working conditions.

1303- Declaration of Trust. The parties shall cause the said Trustees to execute any and all documents necessary and required to continue in full force and effect the Agreement and Declaration of Trust dated the 25th day of January, 1963, and as amended thereafter, creating the said Operating Engineers Local No. 428 Pension Trust Fund for the duration and the term of this collective bargaining agreement. A copy of the Agreement and Declaration of Trust dated the 25th day of January, 1963, and as amended thereafter, is incorporated herein by reference. The Board of Trustees, as appointed, shall have equal voice in making all decisions concerning the Trust, including amendments of the Trust Plan itself.

1304 - The Employer signatory hereto agrees to the appointment as his representative the Trustees designated pursuant to the Agreement and Declaration of Trust of the Operating Engineers Local 428 Pension Trust Fund as Employer representatives and further agrees that they shall be bound by all the terms and conditions of said Agreement, and Declaration of Trust dated January *25,* 1962 and as amended thereafter, and to all amendments thereto during the term hereof.

ARTICLE 14
APPRENTICESHIP AND TRAINING

1401 - Programs. The individual Employer and the Union recognize the need for apprentices and journeyman training and retraining, and to this end the apprentices employed shall be in conformity with the provisions of the Arizona Apprenticeship Council standards.

1402 - State Board of Directors.

1402.1 - In order that there may be a continuing activity in promotion of the Operating Engineers Apprenticeship and Training System, a Board of Directors for this system in the building, heavy-highway and engineering construction and related industries has been established. The principal function of this Board of Directors is to administer the Apprenticeship System and Standards which have been adopted by the Associated General Contractors, Arizona Chapter, and Local Union No. 428, International Union of Operating Engineers for the state of Arizona, identified as Operating Engineers Joint Apprenticeship and Training System.

1402.2 - The State Board of Directors shall be composed of eight (8) members, four (4) of whom shall be appointed by the Associated General contractors, Arizona Chapter, and shall represent the individual Employers, and four (4) of whom shall be appointed by Local Union No. 428, International Union of Operating Engineers, and shall represent the Union, who shall serve staggered terms as specified in Section II of the Standards of the Operating Engineers Joint Apprenticeship and Training System.

1403 - Amounts. There has been established a fund known as Arizona Operating Engineers Joint Apprenticeship and Training Fund, the purpose of which shall be to pay for the administration of the system. Effective June **22, 2005**, the Employer shall make a contribution in the amount of **twenty-five cents** ($.25) per hour, **for the first, and second year, and then twenty-six cents ($.26) the third year,** for each hour worked by each employee covered by the terms of this Agreement and employed by said Employer, to the Joint Apprenticeship and Training Fund, which will be received and administered by the State Board of Directors. This contribution shall be made on or before the fifteenth (15th) day of each month for the proceeding month and continued for each month thereafter, until the expiration of this Agreement.

1403.1 - If additional monetary increases are deemed necessary, they will be designated by the Union as to dates and amounts, and will be taken from negotiated settlements. The Union can revise the economic package so long as the combined total of wages, health and welfare, pension, vacation savings and apprenticeship does not exceed the economic package figure. It is agreed that the Union will give the Company sixty (60) days advance notice, in writing, of proposed changes to the contribution rate.

1404 - The Employer signatory hereto agrees to the appointment as their representatives, the Directors designated pursuant to the Agreement and Declaration of Trust of the Operating Engineers Local 428 Joint Apprenticeship and Training Fund as Employer representatives and further agree that he that he shall be bound by all the terms and conditions of said Apprenticeship Standards and Fund and all amendments thereto during the term thereof.

1405 - Apprentices.

1405.1 - Apprentices shall be paid in accordance with the appropriate progression rate for their indenture. On apprentices indentured after October 1, 1982, only health and welfare and apprenticeship contributions will be due on 1st and 2nd period apprentices; 3rd and later period apprentices will receive full benefits.

1406 - Ratios. On the basis of company work force (not on a job by job basis) thirty percent (30%) of the employees represented by the Union may be apprentices. It shall be compulsory for the Employer who employs eight (8) or more journeymen covered by this Agreement to employ a minimum of one (1) apprentice.

ARTICLE 15
VACATION SAVINGS FUND

1501 - Amounts. Effective June 22, 2005, Employers shall pay the sum of fifty cents ($.50) per hour for each hour worked by employees covered hereunder to the Trustees of the Vacation-Savings Trust Fund. The amount of fifty cents ($.50) is incorporated into the wage rates set forth herein. The fifty cents ($.50) per hour contribution should be deducted from the employee's pay due, after all applicable taxes have been withheld, and forwarded in the manner established by the signatory parties hereto.

1502 - Employers' Obligations. The said payment of the Employer shall discharge his obligation hereunder. Any dispute arising in the administration of said fund shall not be deemed to be a dispute hereunder and shall not be the subject matter of the grievance procedures contained in Article 9 hereof and shall not be deemed to be a dispute concerning wages, hours and working conditions.

1502.1- Payments shall be made to the trustees monthly or in such other manner set forth in the trust

agreement administering the said Trust.

1503- Declaration of Trust. The parties shall cause the said trustees to execute any and all documents necessary and required to continue in full force and effect the Agreement and Declaration of Trust dated the 24th of May, 1971, and as amended thereafter, creating the said Operating Engineers Local No. 428 Vacation Savings Trust Fund, for the duration and term of this collective bargaining agreement. A copy of the Agreement and Declaration of Trust dated the 24th day of May, 1971, as amended, is incorporated herein by reference. The Board of Trustees, as appointed, shall have equal voice in making all decisions concerning the Trust, including amendments of the Trust Plan itself.

1504- The Employer signatory hereto agrees to the appointment as his representatives, the Trustees designated by the contractor association as Employer representatives, and further agrees that he shall be bound by all terms and conditions of said Trust Agreement and to all amendments thereto during the term hereof.

ARTICLE 16
GENERAL WORKING RULES

1601 - Single Shift Hours. Five (5) consecutive days of eight (8) consecutive hours, exclusive of meal period, Monday through Friday inclusive, shall constitute a week's work at straight time rate.

1601.1 - At the beginning of a job or project, starting times for that project (or specific unit of the project) shall be established by the Employer.

1601.2- If for some reason those starting times are to be changed, employees affected must be given notice of change or work shift before the end of their work shift preceding this change.

1602 - Special Shift. All work performed on Sunday shall be paid at the time and one-half (1 ½) rate except that straight time may be paid in those situations where, because of special circumstances such as traffic conditions, job specifications or other contractual requirements require Sunday work.

1603 - Overtime Provisions.

1603.1 - All work performed in excess of ten (10) hours, or forty (40) hours per week, shall be paid at the rate of time and one-half (1 ½). However, daily overtime premium is waived when the reason for the extended work day is caused by emergencies beyond the control of the contractor such as (but not limited to) acts of God, pending inclement weather and/or municipal ordinances.

1603.2 - Sundays and holidays shall be paid at the rate of time one one-half (1 ½).

1603.3 - There shall be no pyramiding of overtime, Sunday and holiday premiums.

1603.4 - When overtime work is required, the employee or employees who were performing such work on straight time shifts shall continue into the overtime period. This rule also applies to Saturday, Sunday and holiday work.

1604 - Meal Period. An employee will be afforded an unpaid thirty (30) minute lunch period between the third (3rd) and sixth (6th) hour of the shift. Any gross violation will be subject to the grievance procedure.

1604.1- Pre-designated Starting Point. Workers shall report for work at an accessible pre-designated

starting point, as designated by the Employer.

1606 - Holidays. Holidays are Sundays, New Year's Day, Presidents' Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, the Friday following Thanksgiving Day and Christmas Day. When any of these holidays other than Sunday fall on Sunday, the following Monday shall be observed as the legal holiday. No work shall be performed on Labor Day except when life or property is in danger. Appropriate holidays listed above will be celebrated in accordance with the Federal Monday Holiday Act. The Employer, at his sole discretion, may shutdown operations for one (1) or two (2) weeks in conjunction with the Christmas Holiday for the purpose of operational efficiency. Such Employer decision will be communicated to the Union and to the employees at least forty-eight (48) hours prior to such shutdown. The Employer and the Union may mutually agree to other changes in the work schedule. The provisions of paragraph 1607.1 shall not apply.

1607 - Payment of Wages. All employees shall be paid on the job prior to quitting time on a designated weekly payday, set by the Employer, providing not more than five (5) working days can be withheld except; when working 4-10's, payment will be made on the last day worked for that week. Any gross violation of this paragraph shall be subject to the same penalties provided in 1607.1 hereof When the designated weekly payday falls on any Holiday mentioned in Working Rule 1606, employees shall be paid on the day prior to that Holiday.

1607.1 - Pay Off Upon Discharge - Employees subject to lay-off for lack of work or for reduction in force shall receive their final paycheck during their last day worked. For employees discharged for any other reason, on the business day after the discharge, the company shall at the employee's election, either (1) mail the employee's final paycheck by overnight mail, (2) provide the paycheck to a union representative, who shall make arrangements to provide the check to the employee. If the employer fails to do one of the above on the next business day after the discharge, the employer shall pay the employee $35.00 per day for each business day elapsed between the business day after discharge and the day which the check is sent or provided, to the employee or the union representative.

1607.2 - When an employee voluntarily quits, he shall be paid in full not later than the next regular succeeding payday. Failure to pay an employee shall carry the same penalty as set forth herein for layoff and discharge.

1607.3 - It shall be considered a suspension of operations when an employee is no longer needed, but is given a definite date of return to work, and such date is two (2) or more normal working days hence the employee, if he so chooses, may request a reduction in force termination. In discharging an employer's obligation under this rule, where an employee cannot be readily located, the rule shall be satisfied where notice and/or check is mailed to the appropriate union office, bearing a timely postmark.

1608 - Pay Provisions.

1608.1 - Any employee reporting for work at the regular starting time and for whom no work is provided, through no fault of his own, shall be paid for two (2) hours' time at the stipulated rate. The employee shall remain at the job site for those two hours, if required by the Employer. Call in procedures shall be established at the beginning of each job. In the event of inclement weather, employees will call the company designee one (1) hour prior to the beginning of the scheduled start time to verify that day's work schedule. Failure to do so forfeits the employee's right to pay for that day, unless other arrangements have been made.

1608.2 - Pay for Different Classes of Work. Employees shall be paid at the rate their classifications call for except when it is necessary to transfer employees from one classification to another within the craft jurisdiction.

1609 - Call Out Time. If an employee is recalled for work outside his regular shift hours after he has left the job site, he shall be guaranteed two (2) hours pay at the applicable rate. This rule shall also be applicable on Saturdays, Sundays and holidays.

1610 - Equipment for Safety and Health. The Employer shall furnish equipment necessary for protection of health and safety including sanitary facilities and potable drinking water (cold water in hot weather) pursuant to state and federal law. It is also understood that the employer will pay for employees personal protective equipment (PPE) required under 29 CFR 1910.132(a). The only exception to this requirement would be safety shoes and prescription safety eyewear.

1611 - Signing of Forms. Employees may be required to sign a form which contains the IRS Form WA (Employee's Withholding Exemption Certificate), Arizona Industrial Commission Form U-11 (Notice to Employees), Arizona Industrial Commission "Self Rater and Self Insurer Notice," and the Arizona Employment Security Commission Form ESC 3 (Notice to Employees) and Immigration Form 1-9 No employee will be required, as a condition of employment, to sign any other papers or to reveal his past medical history or to submit to a physical examination, unless required to do so by law or government regulations. It is understood the Employer has a substance abuse testing program which will be administered and enforced by the Employer.

1612 - Job Access By Union Representatives. The business agent or special representative shall have access to a project during working hours and shall make every reasonable effort to advise the Employer or his representative of his presence on the project. He shall not stop or interfere with work of any worker without the permission of the Employer or his representative. Where there is a security arrangement by the owner or the Employer on a job or project which involves persons entering the project being checked through a guarded gate or similar situation, arrangements for the business representatives to enter the project will be made.

1613 - Craft Job Stewards.

1613.1 - A steward shall be a working employee, appointed by the Union, who shall, in addition to his work, be permitted to perform his union duties during working hours. The Union agrees that such duties shall be performed as expeditiously as possible and the Employer agrees to allow a steward a reasonable amount of time for the performance of such duties. The Union shall notify the Employer or his representative of the appointment of each steward. It is recognized by the Employer that a person appointed steward should remain on the job until its completion, provided he is capable of doing, the specific work involved. In no event shall the Employer discriminate against a steward or lay him off or discharge him on account of any action taken by him in the proper performance of his union duties

1613.2 - The job steward shall not be terminated without just cause, except by consent of the Union, unless the job is completed. If a steward is to be terminated for a just cause, the Union shall be given two (2) working days, forty-eight (48) hours, advance notice together with reasons for termination.

1613.3 - When the Employer's work force on the job has been reduced to three (3) workers, and the steward's tenure of employment is less than that of one of the other employees and one of the other employees is eligible to act as steward, the Employer shall give two (2) full working days notice to the Union and the Union will either appoint a new steward from the remaining employees or relieve the Employer of his obligations under this Working Rule. Upon enlargement of the Employer's work force on the job, said steward shall be the first worker rehired, if available.

1613.4 - There will not be an excess of stewards on a job or project. Any question on such excess shall be

submitted to the grievance procedure herein for resolution.

ARTICLE 17
SPECIAL WORKING RULES
(also see Article 16 - General Working Rules)

1701 - Union Halls. Union halls shall be maintained at Phoenix and Tucson.

1702 - Foreman. An Employer shall have the right to select his own foreman, maintenance foreman or general foreman, subject to the dispatching rules in Al00 hereof, and the union shall in no way interfere with the foreman in the performance of his duties, as instructed by his employer. Foreman and maintenance foremen shall be permitted to work. When any worker in the trade is given foreman's responsibilities, he shall receive foreman pay.

1703 - All craftsmen shall be furnished all hand tools over one and one-half (1 1\2) inch opening, power tools, standard lenses for welding hoods and goggles. These will be charged to the employees who are to guarantee their return in like condition wear and tear excepted. No person shall be denied employment for failure to provide tools, machines or devices specified above.

1704 - Shade. Shade for equipment operators and heavy duty mechanics and welders shall be furnished by the Employer on the job.

1705 - Compressors, Pumps and Welding Machines. The operation, servicing and maintenance of compressors, pumps and welding machines is recognized as within the jurisdiction of the Operating Engineers' Union. When an operator is used, he shall be an Operating Engineer operator and subject to all of the terms and conditions of this Agreement.

1706 Oilers. Oilers are recognized as within the jurisdiction of the Operating Engineers. Whenever a second man is needed to perform the duties of an oiler or grade checker, he shall be an Operating Engineer and subject to the terms and conditions of this Agreement

1707- Oilers/Drivers. Oiler/Drivers shall be required on all truck mounted excavating equipment or hoisting equipment over 35 ton MRC having the configuration for two men.

1708 - Oiler/Drivers and/or Oilers may be called off their regular assignments to perform other work in the immediate vicinity of the crew they are assigned to. Such other assignments shall not interfere with the performance of their duties as an oiler or oiler/driver. Such assignment shall be limited to Group 1 and 2.

1709- When a workman or workmen are required to work without an intervening rest period of at least eight (8) consecutive hours, said workman or workmen shall be paid the applicable overtime rate until such time as they are relieved from all duties for a period of not less than eight (8) hours.

1710 - The Employer shall be responsible for overweight, over height and defective equipment citations, unless the employee has acted contrary to the instruction of the Employer , and the Employer shall pay all fines levied for such violations or citations.
If the Employer fails to pay said fines, and the employee is arrested and/or incarcerated because of said failure, the employee shall receive his/her regular rate of pay for every hour detained and the applicable overtime rate until released from custody. The Employer is not responsible for any fines or for arrest or incarceration for failure to pay said fines if those fines were levied as a result of violations not the responsibility of the Employer.

1711 - Survey work may be assigned by the contractor to any craft or any management employees soley at the contractor's discretion. A composite crew is acceptable.

ARTICLE 18
OPERATING ENGINEERS WAGE RATES AND CLASSIFICATIONS

Effective June 23, 2005 vacation savings pay in the amount of fifty cents (.50) per each hour paid for is to be deducted from the employee's check after Social Security, state and federal taxes are deducted and remitted in compliance with this agreement.

CLASSIFICATIONS	WAGE RATES		
GROUP 1			
	Effective 06/23/2005	Effective 06/01/2006	Effective 06/01/2007
State Wide Rate	**$17.50**	**$18.15**	**$18.81**

A-Frame Boom Truck
Air Compressor Operator
Beltcrete Operator
Boring Bridge and Texture
Brakeman
Concrete Mixer Operator (skip type)
Conductor
Conveyor Operator
Cross Tineing and Pipe Float
Curing Machine Operator
Dinky Operator (under 20 tons)
Electrical Helper
Elevator Hoist Operator (Husky & similar)
Fireman (all)
Forklift & Ross Carrier Operator
Generator Operator (all)
Handler
Highline Cableway Signalman
Hydrographic Mulcher
Hydrographic Seeder
Joint Inserter
Jumbo Finishing Machine
Kolman Belt Loader Operator
Machine Conveyor Operator,
Multiple Power Concrete Saw Operator
Oiler
Pavement Breaker
Power Grizzly Operator
Power Sweeper
Pressure Grout Machine Operator (as used in heavy engineering construction)
Pump Operator
Roller Operator (except as otherwise classified)
Rodman-Chainman
Self-Propelled Chip Spreading Machine
Skip loader (3 c.y. & less),
Slurry Seal Machine Operator (moto-paver driver)
Small Self-Propelled Compactor (with blade)-backflll, ditch operation
Straw Blower
Tripper Operator
Tugger Operator
Welding Machine Operator
Wheel-Type Tractor Operator (Ford-Ferguson type with attachments, etc.)

Winch Truck
CLASSIFICATIONS **WAGE RATES**

GROUP 2

	Effective 06/23/2005	Effective 06/01/2006	Effective 06/01/2007
State Wide Rate	**$20.77**	**$21.42**	**$22.08**

Aggregate Plant Operator (including crushing, screening and sand plants, etc.)
Asphalt Laydown Machine Operator
Asphalt Plant Mixer Operator
Backhoe Operator (Rubber Tire or Track less than 1 cy)
Bee Gee Operator
Boring Machine Operator
Concrete Pump Operator
Concrete Mechanical Tamping Spreading or Finishing Machine Operator (including Clary,Johnson or similar types)
Concrete Batch Plant Operator (all types and sizes)
Concrete Mixer Operator (paving type and mobile mixers),
Crane Operator (crawler and pneumatic less than 15 tons capacity MRC)
Drilling Machine Operator (including water wells)
Electrician Groundman (assisting lineman, tower erector, cable splicer, etc.)
Elevating Grader Operator (all types and sizes, except as otherwise classified)
Field Equipment Serviceman
Locomotive Engineer (including Dinky 20 tons weight and over)
Moto-Paver (and similar type equipment) Operator
Motor Grader Operator (any type power blade-rough)
Oiler Driver
Operating Engineer Rigger
Pneumatic Tired Scraper Operator (all sizes and types),
Power Jumbo Form Setter Operator
Road Oil Mixing Machine Operator
Roller Operator (on all types asphalt pavement)
Screed Operator
Self-Propelled Compactor (with blade) (815, 825 or equivalent – grade operation)
Skip Loader Operator (all types with a rated capacity over 3 but less than 6 cy)
Slip Form Operator (power driven lifting device for concrete forms)
Soil Cement Road Mixing Machine Operator (single pass type)
Stationary Pipe-Wrapping & Cleaning Machine Operator
Surface Heater and Planer Operator
Tractor Operator (dozer, pusher-all)
Traveling Pipe-Wrapping Machine Operator
Trenching Machine Operator
Tugger Operator (two or more drums)

GROUP 3

	Effective 06/23/2005	Effective 06/01/2006	Effective 06/01/2007
State Wide Rate	**$21.85**	**$22.50**	**$23.16**

Auto Grade Machine Operator (CMI and similar equipment)
Barge Operator
Boring Machine Operator (including Mole, Badger and similar type – Directional and/or Horizontal)
Concrete Pump Operator (truck mounted, with boom attached)

CLASSIFICATIONS	WAGE RATES		
GROUP 3 (CONT'D)			
	Effective 06/23/2005	**Effective 06/01/2006**	**Effective 06/01/2007**
State Wide Rate	**$21.85**	**$22.50**	**$23.16**

Crane Operator (crawler and pneumatic over 15 tons & less than 100 ton capacity MRC)
Crawler-Type Tractor Operator (with boom attachment and slope bar)
Derrick Operator
Gradall Operator
Grade Checker (excluding Civil Engineer)
Heavy Duty Mechanic/Welder
Helicopter Hoist Operator or Pilot
Highline Cableway Operator
Mass Excavator Operator (150 Bucyrus, Erie and similar type)
Mechanical Hoist Operator (two or more drums),
Motor Grader Operator (any type power blade-finish)
Mucking Machine Operator
Operating Engineers Electrician (including lineman, tower erector, cable splicer, etc.)
Overhead Crane Operator
Pile driver Engineer (portable, stationary or skid)
Power Driven Ditch Lining or Ditch Trimming Machine Operator
Remote Control Earth Moving Machine Operator
Rotomill and Milling Machine Operator (asphalt or concrete planing)
Skip Loader Operator (all types with rated capacity 6 cy but less than 10 cy),
Slip Form Paving Machine Operator (including Gunnert, Zimmerman and similar types)
Technical Engineer (survey instrument man)
Tower Crane (or similar type)
Universal Equipment Operator (shovel, backhoe, dragline, clamshell, etc., up to 10 cy)

GROUP 4

	Effective 06/23/2005	Effective 06/01/2006	Effective 06/01/2007
State Wide Rate	**$22.88**	**$23.53**	**$24.19**

Crane Operator (pneumatic or crawler - 100 ton hoisting capacity and over MRC rating)
Skip Loader Operator (all types with rated capacity of 10 cy or more)
Survey Party Chief
Universal Equipment Operator (shovel, backhoe, dragline, clamshell, etc., 10 cy and over)

Special:	Effective 06/23/2005	Effective 6/01/2006	Effective 6/01/2007
State Wide Rate	**$12.63**	**$13.28**	**$13.94**

Field Equipment Service Helper
Heavy Duty Repair Helper
Heavy Duty Welder Helper

Multiple-unit earth equipment (Holland Loader, etc.), tractor operator, pneumatic-tired or track type, two units (.50) per hour more than the base unit rate established above and $1.00 per hour for each additional unit.

Engineer Craft Foreman - Not less than (*.50)* per hour more than the highest paid operator under his supervision.

Engineer General Foreman – Not less than ($.50) per hour more that the highest paid foreman under his supervision.

All operators, oilers and motor crane drivers on equipment with booms, except concrete pumping truck booms, including jibs, shall receive one cent ($.01) per foot per hour pay for every foot over eighty (80) feet in addition to his regular rate of pay.

There will be a fifty cent (.50) per hour premium for performing hazardous waste removal as designated by the D.O.E.

1801 - Subsistence - **Effective June 23, 2005** the following subsistence zones rates will become effective. Free zones shall be established as follows: a sixty mile radius from the city hall in Phoenix, Tucson, Flagstaff and Yuma. These cities shall be referred to as "A" cities. Subsistence will be calculated as follows:

All work performed beyond a 60 mile radius of the "A" city from which he or she is properly referred shall be paid as follows per day worked:

0-60 Miles	None
61-100 Miles	**$35.00**
101-150 Miles	**$45.00**
151 and over	**$50.00**

It is understood and agreed that if an employee travels from his/her original subsistence zone and travels back to the original subsistence zone through a higher subsistence zone then he/she shall be paid the highest zone pay through which he/she traveled. (This calculation shall be by the shortest all weather road (maintained) to the center of the project or jobsite.)

1801.1 - Workman's Residence - A bona fide local resident shall have a zone around his residence the same as an "A" city. The man or woman shall not be considered a bona fide local resident unless he meets the residence requirements of a qualified Arizona voter in the county and precinct in which he claims residence.

1801.2 - The Union and the AGC have agreed to work together with our respective international and national organizations to try to get this subsistence clause into the Department of Labor Davis-Bacon rates and specifications.

APENDIX A

A100 - Recognition and Dispatching of Workmen Operating Engineers.

A101 Coverage.

A101.1 - The Employer hereby recognizes the Union as the sole and exclusive collective bargaining agent of all employees employed and performing work as specified in section 101 of the Labor Agreement.

A102 - Hiring Hall Provisions. In order to provide the Employer with a means of securing an efficient and competent working force, and in order to minimize the evils of casual employment by

securing fair distribution of work among the workers represented by the Union, the Employer and the Union agree as follows:

A102.1 - The Employer shall requisition all workmen who are to be employed in the bargaining unit from the Union from the local hiring hall of the Union nearest the job or project on which the workman (or workmen) is to be employed.

A102.2 - The Employer shall give the Union forty-eight (48) hours notice (excluding Sundays and holidays))of its need for workmen, and within such 48 hour period shall not hire persons not referred by the Union. The Union shall dispatch such workmen as soon as possible. If, however, the Union fails to refer workmen within such 48 hour period after having been notified to do so, the Employer shall have the right to hire persons not referred by the Union. However, in such event, the Employer will notify the Union immediately when such workmen are hired, and shall make arrangements for proper referral.

A102.3 - In notifying the Union of its need for workmen, the Employer shall specify to the Union: (a) the number of workmen required, (b) the location of the project, (c) the nature and type of construction involved, (d) the specific classification of work to be performed, and (e) such other information as may be necessary to enable the Union to make proper referral of applicants.

A102.4 - It is understood and agreed that all dispatching of workmen, and the operation of any hiring halls by the Union shall be subject to, and shall be governed by the following conditions:

A102.4.1 - Selection of applicants for referral to jobs shall be on a nondiscriminatory basis and shall not be based on, nor in any way affected by, Union membership, by-laws, rules, regulations, constitutional provisions, or any other aspect or obligation of Union membership, policies, or requirements, nor upon race, color, creed, national origin, age, or sex.

A102.4.2 - The Employer retains the right to reject any job applicant referred by the Union.

A102.4.3 - The Parties to this Agreement shall post in places where notices to employees and applicants for employment are customarily posted, all provisions relating to the functioning of the hiring arrangement.

A102.4.4 - The employment of applicants who have been referred to jobs to the Employer shall be on a nondiscriminatory basis, and shall not be in any way affected by Union membership, by-laws, rules, regulations, constitutional provisions, or any other aspects or obligations of Union membership, policies or requirements, nor on race, creed, color, national origin, age, sex, or political affiliations.

A103 - Hiring Hall Violations. An Employer who violates the provisions of this A100 as to proper referral shall not be entitled to protection provisions of Article 9 of this Agreement. Such cases shall be settled by the Union business representative and the highest available top management of the Company concerned and in no case shall such settlement be delayed longer than twenty-four (24) hours after said grievance arises, Saturdays, Sundays and other non working days excepted. During such period, no work stoppage shall occur.

A104 - Dispatching Procedures. The following procedures shall be forthwith placed in effect at the Union on dispatching offices, pursuant to the provisions of this Agreement.

A104.1 - The Employer has agreed he will first call the Union dispatching office for all men. If Union agents are asked to supply men, they shall promptly relay such request to the appropriate Union dispatch office for servicing the request.

A104.2 - A written referral will be given to each workman dispatched to a job. This is not a Union "clearance" but, rather, written evidence in the workman's possession that he has been dispatched in accordance with this Agreement.

A104.3 - Each Union dispatching office shall maintain appropriate registration lists of cards, kept current from day to day, and referrals will be made on the following order of preference.

Group "A"

Workmen who are properly qualified as follows:

A104.3.1 - Whose names are properly and currently registered with the Union dispatching office. (Currently shall mean registration or renewal thereof at least once every thirty (30) days.

A104.3.2 - Who have completed at least 1,000 hours of work, within the State of Arizona, for any one of the individual Contractors signatory to this Agreement, in classifications of work specified in Article 2 of this Agreement, within the two (2) year period next preceding the date of the applicant's registration.

A104.3.3 - Who have resided in the State of Arizona for at least a one-year period next preceding the date of the applicant's registration.

A104.4 - Any Employer may requisition a workman specifically by name from Group "A" provided said work is qualified as set out above, and available for such employment. It is mutually agreed, however, that Employers requisitioning such workmen specifically by name from Group "A" do so ONLY because of their knowledge of said individual workman's skill, qualifications, and ability to perform the work involved by reasons of (a) said employee having worked for the Company before, of (b) the Employer having been advised of the workman's skill, qualifications and ability, by another Employer for whom he has worked, or by the superintendent, master mechanic, or foreman, currently employed by said Employer, under whose supervision said employee has performed the work involved.

Group "B"

When Group "A" is exhausted, workmen who are qualified as follows:

A104.4.1 - Whose names are properly and currently registered. (Currently shall mean registration or renewal thereof at least once every thirty (30) days).

A104.4.2 - Who have previously been dispatched under terms of this Agreement to any one of the individual Contractors signatory to this Agreement in classifications of work specified in Article 18 of this Agreement, within the three (3) year period next preceding the date of the applicant's registration, but who do not qualify for Group "A".

A104.4.3 - Who have resided in the State of Arizona for a period of at least six (6) months immediately preceding the date of the applicant's registration.

Group "C"

A104.5 - When Group "B" is exhausted, all other workmen who are properly qualified, (as hereinafter provided) whose names are properly registered and who are available for employment.

A104.5.1. - The Union reserves the right to refer men from the "C" list, if not called by name, on the basis of most experienced for the position to be filled. If disputes arise as to an application of this paragraph A104.5.1, such disputes will be handled according to the provisions of A107 herein.

A104.6 - When any Employer has four (4) workmen currently employed on any specific job or project, who have been dispatched from Group "A" or "B" (or "a if not called by name) he may then requisition by name one (1) workman from Group "A". After said Employer has fourteen (14) workmen currently employed on any specific job or project, who have been dispatched from Group "A or "B" (or "C' if not called by name) he may then requisition by name one (1) additional workman from Group "C". Said individual Employer may thereafter requisition by name from Group "C" one (1) additional workman for each additional ten (10) men who are currently employed by him and who have been dispatched from Group "A", "B" (or "C" if not called by name) provided however, that the total number of workmen requisitioned from Group "C" by name shall at no time exceed five (5) for any one (1) established shift on any specific job or project; and provided, further, that this ration, as shown in A104.6.1, up to a maximum number of five (5) workmen from Group "C" shall not be exceeded through out the specific job or project, regardless of whether the Employer is increasing or decreasing his work force.

A104.6.1 - Example - No. of Group "A" or "B" men (or "C" if not called by name) on a specific job or project. No. of Group "C" men who may be called by name on a specific job or project.

1 to 3 Employer may request by name - none.

From 4 to 13, Employer may request by name - 1 for a max of 1.

From 14 to 23, Employer may request by name - 1 for a max of 2.

From 24 to 33, Employer may request by name - 1 for a max of 3.

From 34 to 43, Employer may request by name - 1 for a max of 4.

After 44, Employer may request by name - 1 for a max of *5*.

A104.6.2 - Within forty-eight (48) hours after requesting a workman from Group "C" by name, the Employer shall cause to be delivered to the appropriate Union office a letter (or form letter agreed to between the parties) setting forth the specific reasons for such request as specified in A104.4 hereof. Gross violation of this provision (as determined under Article 9, of this Agreement) shall result in the Employer being denied, for a six (6) month period, the right to call any individual workman specifically by name.

A104.6.3 - Notwithstanding the above-stated order of preference in referrals, and not withstanding any other provision in this agreement, a dispatching office may give first priority preference to any classes protected by the Civil Rights Act, who are properly registered, where reasonably necessary to comply with "affirmative action plans" which are conditions of federally or state assisted construction or which are established from time to time by the Union and the Employer in concert with each other, as part of a community action or industry plan.

A104.7 - All officers and Business Representatives of the Union, who have had experience in any one or more of the occupational classifications of work contained in Article 18 of this Agreement, and all foremen and superintendents employed by individual Contractors in the area covered by this Agreement, who have previously had work experience in the State of Arizona, in one or more of the occupational classifications contained in A100 of this Agreement, shall be deemed to be employed at the trade, and it is the intent of this section to provide that upon return to the employment of an individual Contractor as an employee at the Trade, he does so with the same

preference as if he had continually worked for individual Contractors.

A104.8- The period of years in Group "A" and Group "B" above will be extended for any period on incapacity due to sickness or injury, or for military service, and to workmen employed by individual Contractors (currently signatory to an Agreement), on work outside the State of Arizona, provided workmen so affected become properly registered with the Union dispatching office within thirty (30) days after recovery from such said disability, discharge, or return to Arizona from such work outside the state.

A104.9 - It is further agreed that the Employer, or his agent, shall not contact individual workmen, nor shall the individual workmen contact the Employer or his agent, for the purpose of discussing potential employment under terms less favorable than those set forth in this Agreement. In the event the individual Employer, or his agent, or an individual workman, is alleged to be in violation of this section, the matter is to be resolved under the provision of Article 9.

Al05 - Hiring Hall Inspection. There shall be complete right of inspection of dispatching operations by authorized representatives of the Employer, such right to be subject to reasonable restrictions such as written notice to authorities in charge, reasonable hours and no harassment.

A106 - Registration. No workman shall be refused registration or dispatchment because of his Union or non-Union status, if he is otherwise entitled to dispatchment.

A107 - Qualifications of Workmen. It is the responsibility of the dispatcher to determine, in the first place, the proper Group in which to place the registrant. This normally will be based upon information or papers which the man supplies. If any doubt exists as to the registrant's proper placement, the dispatcher may call prior employers, or make other prompt investigations to get the facts needed. Similarly the dispatcher should make an appropriate notation, where necessary, of the qualifications of the applicant, or his related experience, to assist in sending men meeting the Contractor's stated requirements. Any Dispute which may arise relative to which list a registrant should be placed upon, or as to competency, shall be settled as follows:

A107.1 - The registrant shall file with the dispatching office a written request for review of the disputed matter, within ten (10) days after the dispute arises. He shall also, at that time, deposit with the dispatching office a cash bond in the sum of Thirty Dollars ($30.00) which sum shall be used solely toward paying his share in the referee's fees.

A107.2 - The dispatching office will immediately refer the request to the impartial referee who shall review the dispute within ten (10) days after the written request has been filed. Time and place of an informal hearing will be fixed by the referee and notice thereof will be given to the registrant by the Union, as soon as practicable.

A107.3 - The referee will examine all material evidence submitted by the registrant and the Union, and will conclusively decide which Group the registrant should be placed in and as to what classification s the registrant has. The Union will then register and classify the registrant accordingly. Nothing contained herein, however, may be interpreted to permit or grant power to the referee to alter, amend, modify, or otherwise change any term or condition of the Collective Bargaining Agreement, or these dispatching procedures.

A107.4 - The referee's fees will be borne equally by the Union and the registrant except that the registrant shall in no circumstances be required to pay a sum in excess of Thirty Dollars ($30.00). The registrant's share shall be taken out of the Thirty Dollars ($30.00) bond on file with the

dispatching office, and any excess shall be returned to the registrant as soon as possible.

A108- Dispatching Rules. Dispatching Rules shall be posted in the Union Hall in a place conspicuous to Registrants.

A109 - Position on List. If Registrants inquire, they shall be informed of their position on the out-of-work list.

A110 - Available for Work. "Available for Work" means that the registrant must be present at the time and place uniformly required for dispatchment and be ready, able and willing to go to the job site and perform the work for which he is being dispatched. The practice of the dispatching office shall be uniform as to all registrants with respect to physical presence in the office at given hours, or telephoning in, being available at the telephone, etc., and registrants shall be informed of the practice.

A111 - Notations. Appropriate notations shall be made opposite the registrant's name when his name is reached for dispatchment, showing the job and classification to which he is dispatched, his lack of availability, or other reason that he has been passed over. If inquiry is made by the registrant, he shall be given exactly the same information as to reasons, etc., as appears on the notation. In such cases, or any other cases which may lead to a dispute, the dispatcher should immediately make notes on the facts upon which he or she based his or her decision to dispatch or not to dispatch the man.

A112 - Hiring Hall Modification.

A112.1 - In the event Federal legislation, any Federal Court of Appeals decision, or a decision of the NL.RB determines or establishes that any portion of this Section A100 is illegal, such portion shall be immediately reopened for the purpose of negotiation, upon notice, in writing, from either party to the other.

SIGNATURE PAGE

This Agreement, signed as of the day and year written below:

Signed this _____day of June, 2005

FOR THE UNION

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL UNION NO 428, AFL-CIO

BY: _____
RAYMOND F. CISSNEE, Business Manager & Recording-Corresponding Secretary

BY: _____
KENNETH L. OLSON, President

FOR THE EMPLOYERS:

WHEELER CONSTRUCTION, INC. AND CONSTRUCTION 70, INC.

BY: _____