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**KENTUCKY
BUILDING AGREEMENT**

BY AND BETWEEN

**INTERNATIONAL UNION OF
OPERATING ENGINEERS**

LOCAL 181

AND

**WEST KENTUCKY CONSTRUCTION
EMPLOYERS ASSOCIATION**

JULY 1, 2001 - JUNE 30, 2006



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OPERATING ENGINEERS AGREEMENT

SCOPE OF AGREEMENT

THIS AGREEMENT by and between the West Kentucky Construction Employers Association, Inc., acting as the collective bargaining agency of its members, (individually and collectively for those members who have assigned bargaining rights to the Association), hereinafter called the Employer, and the International Union of Operating Engineers, Local 181, hereinafter called the Union, affiliated with the AFL-CIO, acting for the purposes of this agreement as the collective bargaining agency for its members.

For and in consideration of the mutual advantages to be derived by the parties hereto, they, and each of them do covenant and agree individually and collectively that when *members of the Union, signatory hereto, are directly employed by members who have assigned bargaining rights to the Association, such employment shall be in accordance with the terms of this contract only.*

PREAMBLE

Section 1. *This Agreement is entered into to prevent strikes and lockouts; to facilitate peaceful adjustment of grievances and disputes between employer and employee in this trade; to prevent waste and unnecessary and avoidable delays and expense; for the further purpose of at all times securing for the employer sufficient skilled workmen; and so far as possible to provide for engineers'*

continuous employment. Such employment to be in accordance with the conditions herein set forth and at the wages herein agreed upon, that stable conditions may prevail in building construction, that building costs may be as low as possible consistent with fair wages and conditions, and further to establish the necessary procedure by which these ends may be accomplished.

It is agreed and understood that the Negotiating Committee shall in no event be bound as principle or be held liable as Negotiating Agent or as Principal in any manner for breach of this contract by any of the parties hereto. It is further agreed that the liability of the Employers who accept, adopt, and sign this Agreement shall be several and not joint.

The terms and conditions as set forth herein constitute the entire Agreement between the Employer and the Union. Any other policy and/or procedure which may be outlined in any other form, such as employer's handbook or Union's working rules, and any other written verbal agreements are specifically excluded from this Agreement.

Section 2. The Association shall exercise due diligence in assigning to the Union such work tasks for which it has been given jurisdiction, as determined by the last prior decisions or agreements, if any, as approved by the Building Trades Department of the American Federation of Labor. In the event, however, that capable employees are not available without delaying the work, the Association members, after twenty-four (24) hours notice, may assign such work on a temporary basis to other employees.

Association members shall have the right to request the services of the individual employees, by name, provided he has been employed by said company within the past year. No employer shall employ any person whom he has induced to leave another job.

Section 3. The recognition of the Association members as to Local Union #181, International Union of Operating Engineers, as the sole bargaining agent of all its employees in a unit, consisting of Operating Engineers who are employed by the Association members on the site of the work or as otherwise provided herein, is conditional upon both parties complying with all State and Federal laws.

This contract shall not be construed as covering, requiring, or limiting the employment of supervisors, superintendents, timekeepers, watchmen, or any other employees acting solely in the capacity as representatives of management. This contract is solely and strictly intended as a declaration of the rights and privileges of the parties and of the duties and obligations which each assumes toward the other. It shall not be construed or used in such manner as to affect the relationship between the Association and the Union because of the acts or failure to act of others who are not members of either signatory organization.

Except as specifically provided otherwise herein, the rights of management are retained by the employer, including but not limited to, the right to manage and direct the working forces, the right to hire, to transfer, to discharge

for a just and reasonable cause other than upholding the provisions of this Agreement, to determine the need for the number of employees and the purpose for hiring.

Section 4. This contract to embrace building construction, including preparation of site and installation of utilities and railroad incidental to the construction of the building and on the building site.

Section 5. Building construction work shall be all work on any structure intended for use as shelter, protection, or comfort.

Section 6. The Union shall not discriminate against any contractor or subcontractor so long as he complies with the terms of this Agreement and becomes a signatory hereof.

ARTICLE 1 EFFECTIVE DATE

This Agreement becomes effective July 1, 2001 and shall be in effect until and including June 30, 2006.

ARTICLE 2 TERRITORY JURISDICTION

It is agreed by all parties concerned that this Agreement will cover the following counties of Kentucky: Ballard, Carlisle, Hickman, Fulton, McCracken, Hopkins, Graves, Livingston, Marshall, Calloway, Crittenden, Christian, Lyon, Union, Caldwell, Trigg, Webster, McLean, Muhlenberg, Todd, Logan, Ohio, Daviess, and Henderson.

ARTICLE 3 . UNION RECOGNITION

There shall be no interference with workmen during working hours, except that the Business Representative of the Union may confer with superintendent, foreman, or steward when necessary. The Business Representative shall notify management before entering the job.

ARTICLE 4 MEMBERSHIP MAINTENANCE

All employees in the bargaining unit who are members of the Union in good standing on the effective date of this Agreement must as a condition of employment, maintain their membership in good standing for the life of this Agreement.

Any employee who is not a member of the Union, and any employee who is hired on or after the effective date of this Agreement shall be required to apply for membership in the Union on or after the 8th day of his employment. Such employees who become members of the Union must, as a condition of their employment, maintain their membership.

ARTICLE 5 EMPLOYEE PROCUREMENT

The Union and the Employer recognize that the Union is in a position to aid the employer in recruiting needed employees who can meet the standards of the trade and

who can promote the efficiency and safety of the operations of the Employers. The Employer agrees to notify the Union when new, additional, or replacement employees are needed.

The Union agrees to refer duly qualified applicants upon a non-discriminatory basis when so notified. Such applicants shall be furnished under the above conditions in such numbers as may be necessary to properly execute the work contracted for by the Employer in the manner and under the conditions specified in this Agreement. The decision with regard to the hire and tenure of all employees shall be made by the Employer. If an employee has worked for the Employer within the past year, the Employer may call for that employee by name, provided he is registered on the Local Union's out-of-work list.

The priorities of referral set forth in the Local 181 Hiring Procedure shall be followed except that in cases where the Employer requires and calls for employees possessing special skills and abilities, the Union shall pass over any applicants on the register not possessing such special skills and abilities, and except that in cases where the Employer requests men by name. The Employer shall request only men who are registered out of work in Group A only, and they shall have been a former Employee who has worked for the requesting Employer in the past year in the geographical area. All requests shall be in writing. Applicant must have been on the referral register at least five (5) days before Employee can be requested by the Employer. If an employee is called back to the same Employer within five (5) working days, such employment shall be considered continuous employment and shall be

counted as such. In cases where the Union does not have twenty-four (24) or more hours to fill an order for referral for a few-day job (5 or less days), the Union may pass over applicants on the register in order to promptly fill the order.

The Union and the Employer agree to establish an employment recruiting area. This Recruiting Area shall cover all counties of Kentucky (with the exception of Boone, Kenton, Campbell and Pendleton), and the following counties in the State of Indiana — Bartholomew, Brown, Clark, Crawford, Dearborn, Decatur, Dubois, Floyd, Franklin, Gibson, Harrison, Jackson, Jefferson, Jennings, Lawrence, Martin, Ohio, Orange, Perry, Pike, Posey, Ripley, Scott, Spencer, Switzerland, Vanderburgh, Warrick and Washington.

The Employer agrees to give preference of employment to qualified applicants residing within the above mentioned Recruiting Area, when same are available. This clause shall be applied to employment and reduction of force. The Association will assist Local No. 181 in its efforts to get outside contractors to use local people on their projects.

ARTICLE 6 WAGE RATES

Wages shall be paid according to the following schedule of rates of pay effective July 1, 2001 through June 30, 2006.

CLASS A. Minimum Wage Rate per hour on the following equipment shall be:

| | <u>7/1/01</u> | <u>7/1/02</u> | <u>7/1/03</u> | <u>7/1/04</u> | <u>7/1/05</u> |
|----------------------|---------------|---------------|---------------|---------------|---------------|
| Wages | \$20.00 | | | | |
| H & W | \$ 3.50 | | | | |
| Pension | \$ 4.00 | | | | |
| Appr. & Trng. | \$.40 | | | | |
| Total | | | | | |
| W/B | \$27.90 | \$29.00 | \$30.10 | \$31.20 | \$32.25 |
| Ind. Adv. Program | \$.06 | | | | |
| Adm. Dues | | | | | |
| Assessment | 3% | | | | |

Auto Patrol, batch plant, bituminous paver, cableway carrydeck crane, central compressor plant, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick, derrick boat, ditching and trenching machine, dragline, dredge operator, dredge engineer, elevating grader and all types of loaders, heavy equipment robotics operator/mechanic, hoe type machine, hoist (1 drum when used for stack or chimney construction or repair), hoisting engine (2 or more drums), horizontal directional drill operator, hydraulic boom trucks, locomotive, mechanically operated laser screed, motor scraper, carry-all scoop, bulldozer, heavy duty welder, mechanic, orangepeel bucket, overhead crane, pile driver, power blade, motor grader, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer,

highlift, forklift, (regardless of lift height and except when used for masonry construction), telescoping type forklift, all types of boom cats, core drill, hopto, tow or push boat, A-Frame winch truck, concrete paver, gradeall, hoist, hyster, pumpcrete, Ross carrier, boom, tail boom, rotary drill, hydro hammer, mucking machine, rock spreader attached to equipment, scoopmobile, KeCal Loader, Tower cranes (French, German and other types), hydrocrane, backfiller, gurries, sub-grader, tunnel mining machines including moles, shields, or similar types of tunnel mining equipment.

Utility engineers are to be paid a differential of fifty cents (\$.50) per hour.

Foremen are to be paid a differential of one dollar (\$1.00) per hour.

On small dredges the dredge engineer may be replaced by an oiler when mutually agreed upon by employers and Union.

Employer agrees to employ only National Commission of Certified Crane Operators (NCCO) and tigger or forklift operators who have been certified in accordance with OSHA Reg. No. 1910.178. All certifications would be at no cost to the employer. Current employees will have from July 1, 2001 until June 30, 2002 to obtain the certifications.

Operators on cranes with boom one hundred fifty (150) feet and over including Jib, shall receive one dollar (\$1.00) per hour above Class A rate; two hundred twenty-five (225)

feet and over including jib shall receive one dollar and fifty-cents (\$1.50) above Class A rate.

Operators on cranes using piling leads shall receive one dollar (\$1.00) per hour above Class A regardless of boom length.

CLASS B. Minimum Wage Rate per hour on the following equipment shall be:

| | <u>7/1/01</u> | <u>7/1/02</u> | <u>7/1/03</u> | <u>7/1/04</u> | <u>7/1/05</u> |
|----------------------|---------------|---------------|---------------|---------------|---------------|
| Wages | \$17.26 | | | | |
| H & W | \$ 3.50 | | | | |
| Pension | \$ 4.00 | | | | |
| Appr. & Trng. | \$.40 | | | | |
| Total W/B | \$25.16 | \$26.26 | \$27.36 | \$28.46 | \$29.51 |
| Ind. Adv. Program | \$.06 | | | | |
| Adm. Dues | | | | | |
| Assessment | 3% | | | | |

All air compressors (over 900 cu. ft. per min.), bituminous mixer, joint sealing machine, concrete mixer (under 21 cu. ft.), form grader, roller (rock), tractor (50 HP and over), bull float, finish machine, outboard motor boat, flexplane, fireman, boom type tamping machine, truck crane oiler, greaser on grease facilities servicing heavy equipment, switchman or brakeman, mechanic helper, whirley oiler, self-propelled compactor, tractair and road widening trencher and farm tractor with attachments, except backhoe, highlift and end loader, elevator (regardless of

ownership when used for hoisting any building material), hoisting engine (1-drum or buck hoist), forklift (when used for masonry construction, Firebrick masonry excluded), well points, grout pump, throttle-valve man, tugger, electric vibrator compactor.

CLASS C. Minimum Wage Rate per hour on the following equipment shall be:

| | <u>7/1/01</u> | <u>7/1/02</u> | <u>7/1/03</u> | <u>7/1/04</u> | <u>7/1/05</u> |
|-------------------------|---------------|---------------|---------------|---------------|---------------|
| Wages | \$16.49 | | | | |
| H & W | \$ 3.50 | | | | |
| Pension | \$ 4.00 | | | | |
| Appr. & Trng. | \$ <u>.40</u> | | | | |
| Total W/B | \$24.39 | \$25.49 | \$26.59 | \$27.69 | \$28.74 |
| Ind. Adv. Program | \$.06 | | | | |
| Adm. Dues Assessment | 3% | | | | |

Bituminous distributor, cement gun, conveyor, mud jack, paving joint machine, roller (earth), tamping machine, tractors (under 50 HP), vibrator, oiler, concrete saw, burlap and curing machine, hydro-seeder, power form handling equipment, deckhand steersman, hydraulic post driver, and drill helper.

Employees assigned to work below ground level are to be paid ten percent (10%) above basic wage rate. This does not apply to open cut work.

HAZMAT PAY

Employees who are working on sites as described in 29 CFR Part 1910.120, and who have successfully completed the required forty (40) hours of training and any required refresher training, shall be paid the following rates per hour in addition to the regular hourly rate:

| | | |
|---------|-------------------------------|-------------------------------|
| Level A | Personal Protective Equipment | \$1.00 |
| Level B | Personal Protective Equipment | \$.75 |
| Level C | Personal Protective Equipment | \$. 50 |
| Level D | Personal Protective Equipment | Basic wage (no additional) |

Union and the Employer shall meet and determine proper rate and jurisdiction of equipment not listed in above classification.

ARTICLE 7 PAYMENT OF WAGES

The payroll period shall end on Sunday at 12:00 o'clock midnight and pay day shall be on or before 4:30 P.M. the following Friday, unless otherwise agreed to by the Business Agent. Employees laid off at any time shall be paid immediately.

If an employee is laid off and he is not called or does not return to work within a five-day period, it shall be considered a permanent layoff.

ARTICLE B HEALTH AND WELFARE PAYMENTS

Section 1. Effective July 1, 2001, the Employer agrees to pay the sum of three dollars and fifty cents (\$3.50) per hour for each hour worked or paid whether at regular or overtime rates to the International Union of Operating Engineers, Local 181, Health and Welfare Fund in behalf of all employees working under the terms of this Agreement.

Section 2. The aforesaid Health and Welfare Fund shall be administered pursuant to the Agreement and Declaration of Trust dated April 7, 1968. This Agreement and Declaration of Trust, together with any amendments thereto, is incorporated by reference in this Agreement and shall be considered a part hereof.

Section 3. Contributions to the Welfare Fund are a part of the prevailing wage rate but shall not be deemed wages due the employee.

Section 4. Upon written notice to the Employer from the Union at least sixty (60) days prior to each anniversary date of the Agreement, the Employer agrees to increase its hourly contributions to the aforesaid Health & Welfare Fund in the amount specified by the Union. The hourly wage scale then scheduled to go into effect shall be lowered in an amount equal to the increase in the hourly contributions to the Health & Welfare Fund.

ARTICLE 9 PENSION FUND PAYMENTS

Section 1. Effective July 1, 2001, the Employer shall pay monthly into the Central Pension Fund of the International Union of Operating Engineers and Participating Employers, four dollars (\$4.00) per hour for each hour paid for or worked in the preceding month, by all employees covered by said Agreement. Said payments shall be made on the dates, in the manner and form, and in accordance with the rules and regulations as adopted by the trustees of said fund.

Section 2. Employer agrees to be bound by the Agreement and Declaration of Trust entered into as of September 7, 1960, establishing the Central Pension Fund of the International Union of Operating Engineers and Participating Employers and by any amendments to said Trust Agreement.

Section 3. Employer irrevocably designates as his representative among the trustees of said fund such trustees as are named in said Agreement and Declaration of Trust as employer trustees, together with their successors selected in the manner provided in said Agreement and Declaration of Trust as that document may be amended from time to time.

Section 4. Upon written notice to the Employer from the Union at least sixty (60) days prior to each anniversary date of the Agreement, the Employer agrees to increase

its hourly contributions to the aforesaid Pension Fund in the amount specified by the Union. The hourly wage scale then scheduled to go into effect shall be lowered in an amount equal to the increase in the hourly contributions to the Pension Fund.

ARTICLE 10 WORKDAY AND OVERTIME

A. HOURS OF WORK: Eight (8) hours shall constitute a work day between the hours of 7:00 a.m. and 6:00 p.m.

B. SHIFT WORK: If the Employer wishes to work two (2) or three (3) 8-hour shifts, the working hours of each shift shall be mutually agreed upon between the Business Representative of the Union and the Employer or his Representative. In no case shall an Employee be allowed to work more than eight (8) hours unless overtime is paid. When two (2) or more shifts are worked for two (2) or more consecutive days, the first shift shall work eight (8) hours and receive eight (8) hours pay; the second shift shall work seven and one-half (7-1/2) hours and receive eight (8) hours pay; and the third shift shall work seven (7) hours and receive eight (8) hours pay. If shifts are to be worked less than two (2) consecutive days, overtime shall be paid at the rate specified in this Agreement.

C. OVERTIME: Time and one-half shall be paid for all overtime work which shall include all work performed before 7:00 a.m. or after eight (8) hours work, Monday through Friday, and all day on Saturday, and work performed during lunch period. Double time shall be paid

for all work performed on Sunday and Holidays. Saturday shall run from 7:00 a.m. Saturday to 7:00 a.m. Sunday. Sunday shall run from 7:00 a.m. Sunday to 7:00 a.m. Monday for overtime purposes or to constitute a 24-hour day. Holidays shall be New Year's Day, Memorial Day, Fourth of July, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day, or days observed as such. Veteran's Day shall be observed Friday after Thanksgiving Day. All holidays falling on Sunday shall be observed on Monday following.

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

E. In the event an employee has completed his regular shift and left the site of the work and is called back to perform work, such employee shall be paid at least two (2) hours at the overtime rate.

ARTICLE 11 REPORTING TIME PAY, PAY FOR A PARTIAL DAY'S WORK

If the services of an Engineer are not required, he shall be notified the day previous, and not later than ten (10) minutes before the regular quitting time, by the Foreman or whoever may be in charge. Otherwise, any employee reporting for work shall receive two (2) hours pay at the applicable hourly rate, provided the employee at the employer's discretion remains available for work. Any employee who reports for work and for whom work is provided shall be paid for actual time worked, but in no event less than two (2) hours, and shall be paid by the

hour and half hour for all work past two (2) hours.

In the event a project is shut down or evacuated due to an emergency that neither the owner nor the contractor had knowledge of twenty-four (24) hours preceding such shut down or evacuation, the employee shall receive a minimum of two (2) hours pay and then actual hours worked during such an event.

Breakdowns - It is agreed that when a machine breaks down and the engineer is not assigned to other work covered by this Agreement, the engineer and assistant, if any, shall be retained at the regular rate of wages and shall assist a mechanic or mechanics, if any, assigned to repair such machine. When repair work on any machine continues for subsequent shifts and assistance is required, the engineer and assistant, if any, assigned to the machine, shall be retained to assist mechanic or mechanics. When a supplier of the contractor that is not signatory to this agreement performs repair work on any machine, the engineer and assistant, if any, shall be retained to assist the said supplier.

ARTICLE 12 HOLIDAYS

Double time shall be paid for all work performed on Sunday and Holidays. Holidays shall be New Year's Day, Memorial Day, Fourth of July, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day, or days observed as such. Veteran's Day shall be observed Friday after

Thanksgiving Day. All holidays falling on Sunday shall be observed on Monday following.

ARTICLE 13 FOREMEN

A. The fifth (5th) Operator shall be a working foreman. After the tenth (10th) operator, the foreman will become a non-working foreman and an additional foreman on said project having twenty (20) or more of the aforementioned employees. An additional foreman is required on said project having thirty (30) or more of the aforementioned employees. Such foreman shall have only such authority as assigned by the employer.

B. Foreman shall receive not less than one dollar (\$1.00) per hour over and above the rate of pay for crane operators. Utility Operator capable of operating any heavy equipment shall receive fifty cents (\$.50) over and above the rate of pay for crane operators.

C. Duties of the Operator Foreman shall be: (1) to replace any absenteeism, (2) to replace any Operating Engineer who has started to work and may have to leave through no fault of the Employer, (3) to assist any Operating Engineer who may need help or advice, (4) to assign Operating Engineers to the equipment, if the Employer so desires, (5) to operate any equipment on the job provided the Employer has made an effort to hire an operator.

D. 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 except as provided in this Article under "duties of Operator Foreman."

ARTICLE 14 STEWARDS

The Business Representative of the Union may appoint a Steward per shift whose duty it shall be to see that the conditions of this Agreement are not broken by either the Employer or the Employees, and shall be retained at all times when five (5) or more Employees work; and, in slack season, he shall be the last Employee to be laid off, providing he is qualified — and, under no condition shall he be discriminated against because of his position as Steward. The Steward shall not have authority to call a work stoppage for any reason.

ARTICLE 15 HEALTH AND SAFETY

The Employer shall execute his work in accord with the Federal Occupational Safety and Health Act of 1970. Employees shall perform all work in accord with the provisions of this Act.

In case of injury sustained by an Employee in the course of employment and requiring immediate medical attention, the Employer shall provide for transportation to the physician's office, clinic, or hospital, and the Employee's home, if necessary. If the Employee returns to work on the same day, he shall suffer no loss of time, and if sent

home or to the hospital, shall be paid for the balance of the day's work period in which the injury was sustained. In no case shall such Employee suffer loss of time when required to leave his job for treatment of three (3) hours or less for further treatment of such injury.

BOLT Drug Program – The Employer and the Union agree to abide by the Drug Testing Program adopted under BOLT. BOLT is the program identified as Builders and Organized Labor's Substance Abuse Policy and Trust Agreement. *The Union and the Employer will be bound by the terms and requirements of said BOLT program and any changes made in the BOLT program by the trustees of BOLT.*

Safety Orientations – For few day referrals, one to five day, the Employer reserves the right to call for employees with current plant safety orientations on jobs where such certifications are needed as determined by the Employer. Union will encourage employees to acquire training on their own time. Employer will assist in setting up plant orientations.

ARTICLE 16

SUBCONTRACT CLAUSE

The Associated member or signed Contractor when subcontracting any portion of the on-site work within the *jurisdiction of the Union, agrees he will not subcontract to any person, firm, or corporation, unless the aforesaid person, firm, or corporation performing the subcontracting work in question agrees to observe and be bound by all of the terms and conditions of this Agreement.*

ARTICLE 17

GRIEVANCES AND DISPUTES

Section 1. The Association shall appoint a Standing Committee of two persons and the Union shall appoint a Standing Committee of two persons to promote the operation of this Agreement.

Section 2. All disputes of every type and character between the parties hereto (except as described in Article 18) arising from this Agreement, which are not settled directly between the persons involved shall be submitted to a joint arbitration committee composed of the Standing Committee (the representation from each Standing Committee to be equal as to numbers).

The Joint Arbitration Committee shall meet within forty-eight (48) hours after a request to do so is received from either the Association or the Union. The Joint Arbitration Committee shall hear and consider all evidence presented by the parties, including that of the Business Representative of the Union. The Committee shall render a decision by majority vote of its members. A decision of the Joint Arbitration Committee shall be final and binding and shall be promptly complied with by all parties. In the event a majority decision is not arrived at within twenty-four (24) hours after the hearing is concluded, the dispute shall be referred to an Arbitrator who shall decide the case by rendering a written decision. The Arbitrator shall be chosen in this manner: The party requesting arbitration shall have the right to request a panel from either the American Arbitration Association or the Federal Mediation

and Conciliation Service who shall be requested to submit a list of seven (7) qualified persons to act as arbitrator. The arbitrator will be selected by each party striking an equal number of proposed arbitrators from the panel. The remaining individual shall be the arbitrator whose decision shall be final and binding upon all parties concerned. The arbitrator shall not have the power to add to, subtract from, or alter any of the terms of this Agreement. All expenses of arbitration previously authorized by the Joint Arbitration Committee shall be borne equally by the Association and the Union.

Any party requesting an arbitration panel from the American Arbitration Association shall be solely responsible for the entire cost and expense charged by American Association for such service.

Section 3. Neither the Association, Association Members signatories, nor the Union or the Union Members shall engage in, permit, induce, or encourage any stoppage of work, slowdown, strike, lockout, or concerted refusal to work by reason of any dispute or difference of opinion or policy between the parties hereto, save and except the failure of the other party to abide by a decision of the Joint Arbitration Committee, the Arbitrator, or a judgment of a court of law.

Section 4. Any employer involved in a dispute or grievance which is processed before the Joint Arbitration Committee, and who is not a contributor to one of the Advancement Funds set forth in Article 25 shall be required to pay a service fee of \$100.00 per dispute or grievance processed

by the Joint Arbitration Committee and such fee shall be paid to the appropriate Advancement Fund to defray the cost of such dispute of grievance.

ARTICLE 18 JURISDICTIONAL DISPUTES

If the dispute involved the jurisdiction of the Union with the jurisdiction of any other Union or Unions, then the dispute shall be resolved according to law, provided however, that an opportunity be first given to the Union to attempt to settle the Jurisdictional Dispute with the other Union within ten (10) days from the time the dispute arose.

ARTICLE 19 MODIFICATION OF AGREEMENT

In consideration of the concessions made to each other in negotiating this contract, each of the parties agrees that it will not, prior to the expiration date hereof, demand any modification or termination of the conditions herein stated, nor demand a contract or subjects not herein covered.

It is further understood and agreed that this Agreement shall be in full force and effect beginning with the first payroll which begins on or after July 1, 2001, and continues until June 30, 2006. It is agreed that on or before sixty (60) days immediately preceding the expiration of the Agreement either party shall notify in writing the other party of any change in wages and conditions contemplated for the ensuing year.

ARTICLE 20 SAVINGS CLAUSE

Nothing in the Agreement shall be construed or is intended to be contrary to any Local, State or Federal Law.

ARTICLE 21 NON-DISCRIMINATION

The Union and the Employer mutually agree that they will not discriminate against anyone because of race, color, creed, age, sex, or national origin, in accepting members, or in the selection and hiring of employees, and do further agree that they will comply with all State and Federal Laws and Regulations regarding Equal Employment Opportunity. Whenever reference is made to gender in this agreement, the same shall be interpreted and construed as including both male and female.

ARTICLE 22 GENERAL CONDITIONS

A. Any operator may be moved by the Employer to any piece of equipment and back to the original piece of equipment, provided the operator is capable of performing the work, and is paid the hourly rate of wages applicable to the highest classification of work performed during such changes. Provided further, that such changes do not replace another operator who had reported for work or who had started to work during the work period. Provided further, that where the project presents circumstances which prevent completion of the above described changes,

the parties may, by mutual agreement increase the number of such changes.

B. An Employee shall remain on the job, if required, for the length of time for which he is paid, during which he shall do what is required of him pertaining to machine on job.

C. The engineer must keep the machine clean and may assist in repairing the machine he operates. When this work is done outside the regular working hours, the regular overtime shall be paid. Master Mechanic and Mechanics must be Operating Engineers. When a piece of equipment needs repair, the regular Operating Engineer normally employed on same shall not be laid off while an outside shop man is working on the job site and the engineer shall assist this man in making the necessary repairs.

D. An oiler must be employed on all cranes including self-propelled cranes, hydro cranes, hoptos, and gradealls. Oilers are not required on small Ford and Case backhoes or similar type equipment. No oilers are required on trench machines and 50 ton or one and one-half yard and under backhoes, cranes, shovels, draglines, and one and one-half yard hydraulic backhoes, also rough terrain cranes (commonly known as cherry pickers) equipped with single cab and controls. Manufacturer's Rating Capacity to be used. In the event that a second man is needed by the Employer to operate said equipment, he shall be an Operating Engineer. The Business Representative and the Employer shall have the right to meet and decide whether or not an oiler is required.

E. The Employer shall furnish suitable shelter to protect Employee from falling materials and from the elements. Heat and/or curtains shall be provided for all equipment wherever practical from November 1 to April 1. Umbrellas shall be furnished on all tractors wherever practical during summer months. Iced drinking water shall be furnished from April 1 until November 1. The mechanics performing welding duties will be furnished welding gloves. Employees shall furnish steel toe shoes and prescription safety glasses. If employee is required to work in hazardous or contaminated material and such material cannot be removed so that the shoes can be safely worn on the street or in the home, then the employer shall furnish steel toe shoes.

F. When there is equipment to be operated other than during normal operations when the rest of the normal crew is not working, the operating engineer who regularly operates the particular piece of equipment shall be given first chance to perform the work, if he can be contacted.

G. 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 he can be contacted.

H. When moving equipment (covered by this Agreement), by its own power, such equipment shall be operated by employees covered by this Agreement.

1. Ownership of a truck shall not be a condition of employment or continued employment.

ARTICLE 23

MINOR OR LIGHT EQUIPMENT OPERATION

Operating Engineers shall be employed on minor or light equipment in the manner described below:

1. Minor or light equipment is defined as air compressor (900 cu. ft. per min. and under), pump, welding machine (gasoline and diesel driven), conveyor, generator, mechanical heaters, and bush burners.

2. If up to four (4) pieces of minor or light equipment are put into part-time operation, any operating engineer in Group A, B, or C shall operate up to four (4) pieces of minor equipment in addition to his regular job and shall receive an additional fifty cents (\$.50) per hour. No operator shall be allowed to operate more than four (4) pieces of minor equipment in addition to his regular job without approval of the Business Representative.

If operating engineer operates a piece of minor equipment for less than four (4) hours, he shall receive four (4) hours pay (\$.50 per hour). If operating engineer operates a piece of minor equipment over four (4) hours, he shall be paid for eight (8) hours (\$.50 per hour), except as provided for in Article 11.

3. An operating engineer shall be employed when up to four (4) pieces of minor equipment are put into full-time

operation at Group C hourly rate of pay. The operating engineer shall operate five (5) pieces to seven (7) pieces of minor equipment at Group B hourly rate of pay.

When there is a question of application of this minor equipment section, the Business Representative and the Employer shall resolve such questions by mutual agreement.

ARTICLE 24 INDUSTRY ADVANCEMENT FUND

Section 1. PADUCAH AREA CONSTRUCTION ADVANCEMENT FOUNDATION OF WESTERN KENTUCKY.

During the term of this Agreement, commencing July 1, 2001, each Employer, a party hereto, shall pay to the Paducah Area Construction Advancement Foundation of Western Kentucky six cents (\$.06) for each hour worked by each of the employees who are in the collective bargaining unit covered by this Agreement. Payment shall be made on the forms and in the manner prescribed by the Fund Office.

Payments to the Paducah Area Construction Advancement Foundation of Western Kentucky will be made on all work performed in the following counties: Ballard, Carlisle, Hickman, Fulton, McCracken, Hopkins, Graves, Livingston, Marshall, Calloway, Crittenden, Christian, Lyon, Union, Caldwell, Trigg, Webster, McLean, Muhlenberg,

Todd, Logan and Ohio.

Section 2. Payments to the above described Construction Advancement Program to be held in trust for the purposes of generally benefiting and promoting the Construction Industry provided, however, that no expenditure from said Fund shall be made for any activity harmful or injurious to the Union. No part of the fund allocated for the Construction Advancement Program shall be spent directly or indirectly for any of the following purposes:

- 1. Promotion of legislation opposed by the Union or opposition to legislation favored by the Union.**
- 2. Subsidies, indemnities, or payment of any kind to Contractors during strike, for, or in connection with a period of strike, lockout, or work stoppages.**
- 3. Litigation before any court or administrative body against the Union or the payment of any expenses directly or indirectly involved in any such litigation.**
- 4. Publicity or public relations campaigns in support of management's position respecting bargaining negotiations with the Union.**

Each employer shall send the contribution to the Fund monthly on or before the 10th of each month with an accounting of hours for which it compensated each employee during the preceding month.

ARTICLE 25 PAYMENT TO FUND

Section 1. The contribution reports of the Employer must be made on forms supplied by the Trust Offices of the various funds listed above.

Section 2. Each Employer shall pay the contributions to the various Funds monthly on or before the 10th of each month, and failure of any Employer to make this payment to the various Funds by the 20th of the month on which payment is due, or for repeated failures to meet these payments by the 10th of each month shall subject said Employer to the following:

A. A fine for liquidated damages set by the Trustees of the respective funds, for the Employer's delinquency.

B. The delinquent Employer shall, at the request of the Trustees of the various Funds set out above, be required to furnish a surety bond, not to exceed Two Thousand and Five Hundred (\$2,500.00) Dollars, to insure that said Employer's future payments to the Fund will be made on a timely basis.

C. The Union, at its option, may exercise its economic strength against the delinquent Employer, by picketing said Employer at its various construction projects, to protest the Employer's continued delinquency, this shall include wages. Said picketing shall not be considered a breach of this Agreement.

It is understood and agreed to by and between the parties to this Agreement, that the remedies listed above, for the Union to pursue in the case of a delinquent Employer, are not exclusive but are in addition to all other remedies legally available to the Union at the time of said delinquency.

Section 3. Each Employer signatory to or bound by this Agreement, agrees that his firm partnership, or corporation shall and does hereby become an "Employer" under the terms of the Agreement and Declaration of Trusts forming the various funds enumerated in Article 8, Article 9, and Article 24.

ARTICLE 26 APPRENTICESHIP & TRAINING

It is mutually agreed that the International Union of Operating Engineers, Local No. 181, Apprenticeship and Training Trust, registered with the Bureau of Apprenticeship and Training, and the U.S. Department of Labor, is a part of this Agreement as is set forth herein.

It is agreed that, effective July 1, 2001, and for the duration of the Agreement, each employer signatory to this Agreement, or facsimile thereof, will contribute to the Operating Engineers, Local No. 181 Apprenticeship and Training Fund forty cents (\$.40) per hour for each hour worked or paid for on all employees covered by this Agreement.

Each Employer shall send the contribution to the Fund

monthly on or before the 10th of each month with any accounting of hours for which it compensated each employee during the preceding month.

The pay rate of all Apprentices shall be for the proper period of training as determined by the Joint Apprenticeship and Training Committee and as stipulated in the Apprenticeship Agreement. The following schedule of 1,000 hour periods shall be the hourly rates of pay for Apprentices:

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| First Period - 0 to 1,000 hours | 60% |
| Second Period - 1,001 to 1,999 hours | 65% |
| Third Period - 2,000 to 2,999 hours | 70% |
| Fourth Period - 3,000 to 3,999 hours | 75% |
| Fifth Period - 4,000 to 4,999 hours | 80% |
| Sixth Period - 5,000 to 6,000 hours | 90% |

At no time will the Apprentice rate be more than the classification of the machine he is operating.

ARTICLE 27 PROJECT AGREEMENT

It is mutually agreed that on projects for which no pre-determined wage rate is established, the Association may request to negotiate a project agreement or job site agreement if they receive such a request from any Employer signatory hereto. In no case shall the Union negotiate a project or job site agreement with an individual Employer unless approved by the area Association. If negotiated, all Employers signatory to this Agreement shall

have the right to apply the terms on wages, hours, or work conditions contained in the said project or job site agreement to their Employees for the same project or job site and such application shall not be deemed a violation of this Agreement. In addition, the Association and Union hereby agree that any work that is explicitly excluded from coverage under KRS337010 shall be performed at a wage rate not to exceed eighty percent (80%) of the current wages of this agreement provided that the current fringe benefit packages shall be paid.

The negotiated project or job site agreement shall be limited to particular job sites or to particular projects. When that project or job site agreement expires, then work is subject to the regular terms and conditions of this Agreement.

ARTICLE 28 ADMINISTRATIVE DUES CHECK-OFF

The Employer agrees to deduct from the pay of the Employees covered by this Agreement an administrative dues deduction of three percent (3%). Before any such deduction is made, the Union shall furnish to the Employer a properly signed authorization card for the Employees permitting such deduction. Such deduction shall be remitted to the Local Union on a monthly basis on the forms and in the manner prescribed by the Local Union.

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

Exception: Any administrative dues monies withheld will be deemed as wages and collection thereof will be in accordance with Article 25, Paragraph C of this Agreement.

Signed and agreed to this 1st day of July, 2001.

West Kentucky Construction
Employers Association, Inc.

International Union of
Operating Engineers,
Local No. 181

Keith Murt

James Manning,
Business Manager

Jason Siener

John Brothers,
Secretary

Mike Gerescher

Fred Blaylock,
President

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| 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| 29 | 30 | 31 | | | | |

| S | M | T | W | T | F | S |
|-----------------|----|----|----|----|----|----|
| NOVEMBER | | | | | | |
| | | | 1 | 2 | 3 | 4 |
| 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 26 | 27 | 28 | 29 | 30 | | |

| S | M | T | W | T | F | S |
|-----------------|----|----|----|----|----|----|
| DECEMBER | | | | | | |
| | | | | | 1 | 2 |
| 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| 17 | 18 | 19 | 20 | 21 | 22 | 23 |
| 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 31 | | | | | | |

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