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Title: **Allied Construction Employers Association, Associated General Contractors of Greater Milwaukee, Inc. (Master Building Agreement) and International Union of Operating Engineers (IUOE), Local 139 (2003)**

K#: **8095**

Employer Name: **Allied Construction Employers Association, Associated General Contractors of Greater Milwaukee, Inc.**

Location: **Milwaukee, Wisconsin**

Union: **International Union of Operating Engineers**

Local: **139**

SIC: **1611**

NAICS: **23731**

Sector: **P**

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K8095

2,000 words

MASTER BUILDING AGREEMENT AREA I

66 pgs.

between

**Allied Construction Employers
Association, the Associated General
Contractors of Greater Milwaukee, Inc.**

and

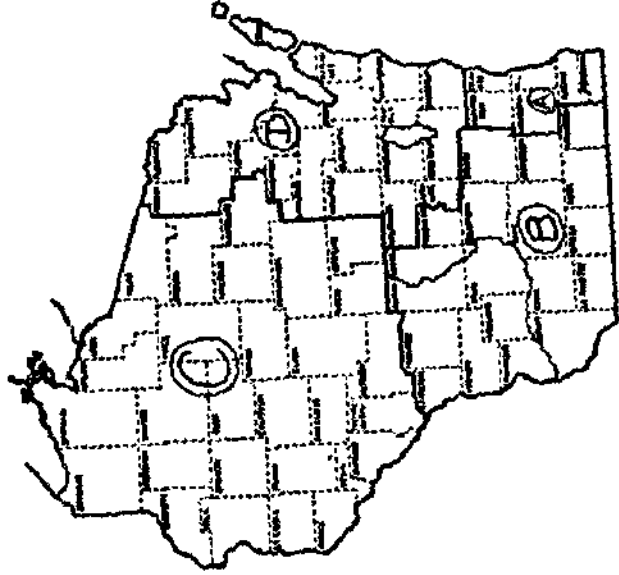
**The International Union
of
Operating Engineers
Local Union No. 139**



June 1, 2003 to May 31, 2006



DISTRICTS



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AREA I

MASTER BUILDING AGREEMENT

THIS MASTER AGREEMENT, made and entered into this 1st day of June, 2003, by and between the Allied Construction Employers Association, Inc., and the Associated General Contractors of Greater Milwaukee, Inc., hereinafter called the "Associations" for and on behalf of those persons, firms or corporations who have authorized the Associations to negotiate and conclude a Labor Agreement on their behalf, herein called the "Contractor," and International Union of Operating Engineers, Local No. 139, hereinafter called the "Union."

WITNESSETH:

That the parties hereto, for and in consideration of the mutual promises and obligations herein contained, agree to and with each other as follows:

ARTICLE 1

Section 1.1 RECOGNITION: The Associations and the Contractor hereby recognize the Union as the sole and exclusive bargaining agent for all employees in the bargaining unit. For the purposes of this Master Agreement, the bargaining unit shall consist of all heavy equipment operators and other workers in the jurisdiction of the Union as set forth in Article VI, and Article IX, on a multi-employer basis.

Employers may voluntarily recognize the Union under Section (9)a of the National Labor Relations Act upon a showing of majority status by the Union. A voluntary recognition is attached to this Agreement.

Section 1.2 PURPOSE: The purpose of this Agreement is to determine the hours, wages and

other conditions of employment, and to adopt measures for the settlement of differences and maintaining a cooperative relationship so that the Contractors may secure sufficient capable workers and the workers may have as much continuous employment as possible, without interruption by strikes or lockouts, except as otherwise provided by this Agreement.

Section 1.3 ASSIGNMENT OF WORK: The Contractor hereby agrees to assign all work that is to be performed in the categories described in Article VI, Section 6.1, and Article IX, Section 9.1, to employees in the bargaining unit covered by this Agreement.

Section 1.4 ASSOCIATIONS' LIABILITIES: It is understood and agreed that the Associations are parties to this Agreement only as the negotiating agent and shall not be held liable for any violation of its terms by the Contractor.

Section 1.5 SCOPE OF AGREEMENT: A) This Agreement shall apply to all on-site building construction work including operations incidental thereto. Building construction work shall include the construction, erection, dismantling, wrecking, modification, addition to or improvements of building structures; the construction, erection, modification of industrial plants, commercial buildings, residential structures, steam and nuclear power plants; snow removal; flood control; prestressed concrete erection; the driving of sheet piling and piling, caisson work; foundation work; atomic reactors, ordnance plants; the construction and dewatering of all underground utilities; such as, sewer and water mains, gas lines, tunnels, and conduit; railroad construction and maintenance; and all street work public and private, such as excavating, grading, landscaping, paving and any other work directly relat-

ed to the aforementioned operation. This Agreement excludes all marine work on the Great Lakes (Michigan-Superior) as well as all work let by the Wisconsin Department of Transportation.

Section 1.5 (B) When bargaining unit employees are assigned to perform work outside the scope of this Agreement as defined in paragraph (A) above, and such work is not covered by the provisions of any other labor agreement with the Union or another bona fide labor organization, said employees shall receive all fringe benefit fund contributions set forth in this Agreement and at least the minimum wage rate set forth herein.

Members of the bargaining unit who refuse to perform work outside the scope of the Agreement shall not be discriminated against, however, a member may be laid off for such refusal.

ARTICLE II UNION SECURITY

Section 2.1 MEMBERSHIP: All present employees of the Contractor covered by this Agreement who are members of the Union as of the date of execution of this Agreement shall, as a condition of continued employment with said Contractor, maintain membership during the life of this Agreement to the extent of tendering the periodic dues and initiation fees uniformly required by the Union as a condition of acquiring or maintaining membership. All present employees of the Contractor covered by this Agreement who are not members of the Union and all employees of the Contractor covered by this Agreement shall become members of the Union within eight (8) days following the date of this Agreement or within eight (8) days fol-

lowing the date of hire, whichever is later, and shall, as a condition of continued employment with said Contractor, maintain membership during the life of this Agreement to the extent of tendering the periodic dues and initiation fees uniformly required by the Union as a condition of acquiring or maintaining membership.

Section 2.2 FAILURE TO MAINTAIN MEMBERSHIP OR JOIN: Upon written notice from the Union, advising that an employee covered by this Agreement has failed to maintain membership in the Union in good standing as covered above, by payment of uniform initiation fees and/or dues as required, the Contractor shall forthwith discharge the employee unless the Contractor has reasonable grounds for believing that membership was not available to the employee on the same terms and conditions generally applicable to other members, or that membership was denied or terminated for reasons other than for failure of the employee to tender the periodic dues and initiation fees uniformly required by the Union as a condition of acquiring or maintaining membership.

Section 2.3 WRITTEN NOTICE: The Contractor shall not discharge or cause an employee to lose any work under this Article except upon written notice from the Business Representative as set forth herein.

Section 2.4 EQUAL EMPLOYMENT OPPORTUNITY: The Contractor and the Union agree that there will be no discrimination in employment based upon race, color, creed, national origin, sex, or age, and that nothing elsewhere in this Agreement shall be construed as requiring or permitting such discrimination.

ARTICLE III

PERIOD OF AGREEMENT

Section 3.1 PERIOD OF AGREEMENT: This Agreement shall continue in full force and effect until May 31, 2006, and thereafter and shall be subject to amendment or termination only if either party notifies the other party in writing of its desire to amend or terminate the same not more than one hundred and twenty (120) days, but not less than ninety (90) days prior to May 31, 2006, or of the expiration date of any subsequent agreement.

ARTICLE IV

SUBCONTRACTING

Section 4.1 UNION SUBCONTRACTOR: The Contractor agrees that, when subletting or contracting out work covered by this Agreement which is to be performed within the geographical coverage of this Agreement at the site of the construction, alteration, painting, or repair of a highway, building structure or other work, they will sublet or contract out such work only to a subcontractor who is signed to this Master Agreement.

Section 4.2 When situations arise wherein it is claimed that no union contractor is available for the proposed work, the Contractor and the Union shall meet and agree upon an equitable solution.

ARTICLE V
GEOGRAPHICAL AREA

Section 5.1 AREA: This Agreement applies to the following counties in the State of Wisconsin: Kenosha, Milwaukee, Ozaukee, Racine, Washington and Waukesha.

ARTICLE VI
JURISDICTION

Section 6.1 EQUIPMENT ASSIGNMENT: The Employer agrees to assign any equipment within the jurisdiction as described below to bargaining unit employees: the operation of all hoisting and portable engines on building and construction work where operated by steam, electricity, diesel, gasoline, hydraulic, or compressed air, butane, propane, or other gases and nuclear or atomic power, including but not limited to, all equipment listed in Section 9.1 (Wage Classification) of this Agreement.

Section 6.2 NEW OR UNLISTED EQUIPMENT: Should new or unlisted equipment within the claimed jurisdiction of the International Union of Operating Engineers be utilized for which no wage rate appears in this Agreement, the Union and the Association, acting on behalf of all the Contractors party to this Agreement, shall meet and agree on the wage rate to be paid for its operation.

ARTICLE VII WORK RULES

Section 7.1 MANNING DETERMINATION: The number of workers to be employed is at the sole discretion of the Contractor, and the fact that certain classifications and rates are established does not mean that the Contractor must employ workers for any one or all classifications or to operate any particular piece of equipment that happens to be on the project unless the Contractor determines they have need for such workers or unless otherwise provided for in this Agreement.

Section 7.2 JUST CAUSE: The Contractor may discharge any workers for just cause shown, or whose work is unsatisfactory, or who fails to observe the safety precautions, or other rules or regulations prescribed by the Contractor for the health, safety and protection of the workers. Further, the Contractor shall have the right to discharge any workers for drunkenness, dishonesty, or insubordination in the performance of his/her job. However, no workers shall be discharged for defending the rights of any workers under the terms of this Agreement.

Section 7.3 SMALL EQUIPMENT: Combination small equipment operators, operating and maintaining equipment listed in Article IX, Section 9.1, Classification 4, shall be assigned at the Pre-Job Conference.

Section 7.4 FORKLIFT ASSIGNMENT: The operation of forklifts is exclusively the craft work of the Operating Engineers and assignment of said operation shall be made to an Operating Engineer, dispatched and covered by the terms and conditions of this Agreement. On jobs or projects where the use of

the forklift is not of sufficient quantity to warrant the employment of an operator, the Contractor or Contractor Representative will contact the Union District Business Representative of the Operating Engineers and if mutually agreed, then and only then, may the Contractor use another employee to perform said work.

Section 7.5 HEATERS: All fueling, maintenance, checking, or on the job repair of all heaters used for temporary heating, such as Herman Nelson, Dravo, Warner, Silent Glo and other similar types is the work of the Operating Engineer. Operating Engineers will not be required when electric heaters are powered by a commercial source. Operating Engineers will not be required when heaters are furnished and serviced by a commercial source.

Section 7.6 BOILERS: An Operating Engineer shall be assigned to all portable boilers used for temporary heating purposes, heating of materials, or any other power purposes, on a project site and the Operating Engineer shall be in attendance at all times that the boiler is operating.

Section 7.7 (A) POWER PACK VIBRATORY: An Operating Engineer shall be assigned to all power pack vibratory/ultra sound driver and extractor equipment while driving or extracting sheeting, piling or caissons. The following manning clause is agreed:

It is not necessary to assign a worker exclusively to this equipment unless an extra worker is needed to operate the vibratory hammer. If the operating controls are located at the crane operator's station, no extra worker is required. If the operating controls (e.g. on, off, clamp, etc.) are operated by other than the crane operator, then that person shall be an operating engi-

neer and not the oiler assigned to the crane. He/she shall be paid the wage rate listed in Classification No. 4.

Section 7.7 (B) GENERATORS: Generators or combination of generators having a capacity of 150 KW or less shall be assigned to an Operating Engineer. Generators or combinations of generators of over 150 KW on a single project and operated by a single Employer shall be assigned to an Operating Engineer and an Operating Engineer shall be in attendance at all times that the generators are operating. The Operating Engineer so required may also attend a deep well type dewatering system when such system requires manning.

Section 7.8 AIR COMPRESSORS: Air Compressors or combinations of air compressors having a capacity of 400 cubic feet per minute or less shall be assigned to an Operating Engineer. Air compressors or combinations of air compressors of over 400 cubic feet per minute on a single project and operated by a single Employer shall be assigned to an Operating Engineer and an Operating Engineer shall be in attendance at all times that the compressors are operating.

Section 7.9 CONCRETE PUMPS: All concrete pumps shall be assigned to Operating Engineers and Operating Engineers shall be in attendance at all times that the concrete pump is operating.

Section 7.10 WELL POINT AND DEWATERING SYSTEMS: (A) A dewatering system is defined as a series of well points or deep wells from which continuous pumping is done.

(B) The dewatering system utilizing well points shall be manned by a member of the bargaining unit at all times that the system is pumping, except that dawa-

tering systems utilizing well points with pumps powered by electric motors shall not require manning on a full-time basis, but shall be serviced and repaired by a member of the bargaining unit. If the Contractor determines that manning is required, the system shall be manned by a member of the bargaining unit.

(C) A dewatering system utilizing deep wells shall be assigned to a member of the bargaining unit and shall be manned by a member of the bargaining unit as required by the Contractor and in accordance with Article VII, Section 7.19 of this Agreement.

A dewatering system utilizing deep wells and pumps driven directly by internal combustion engines shall be manned at all times the system is pumping.

(D) In the event of non-compliance with assignment and manning provisions of this Section as they pertain to the operation of a dewatering system utilizing well points, the sole remedy shall be to assign and man the dewatering system by a member of the bargaining unit for all additional hours that the dewatering system operates.

Section 7.11 ENGINEER AND OILER: (A) Oiler. An oiler shall be assigned to cranes and derricks with a lifting capacity of over one-hundred (100) ton (manufacturers' rated capacity). It is agreed the manufacturers' rated capacity to mean: The lifting capacity shown at its minimum lifting distance from center pin, with the tracks or outriggers fully extended, with the minimum amount of boom, and with the maximum amount of counterweight on and extended, maximum amount of sheaves and lagging, for the machine's maximum lifting capacity.

(B) CAISSON OR VERTICAL BORING MACHINES: Caisson or vertical boring machines shall have an engineer and an oiler assigned to operate and maintain them. When machine movements on the project necessitate a second employee, such employee will be a member of the bargaining unit.

(C) START-UP TIME: The engineer and oiler shall start work one-half (½) hour before the regular shift to oil, grease, start machines, safety inspection, or other work to be performed.

(D) OILER'S DUTIES: The oiler shall be under the direct supervision of the operator. His/her main duty shall be to the equipment he/she is assigned to. It is agreed that in addition to his/her main duty as an oiler, he/she may maintain not more than two (2) machines in Classification No. 4 of Article IX, Section 9.1.

(E) SPECIAL PROJECTS: On all atomic, gas, nuclear and steam power plants, hydro-electric plants, defense plants, earth dams, river flood control projects, an engineer and oiler shall be assigned to all cranes, clamshells, draglines, derricks, pile drivers, shovels, backhoes (except tractor type), boring rigs, regardless of capacity or size, all rough terrain cranes twenty-five (25) tons or over, (manufacturers' rated capacity).

(F) An oiler shall be assigned to assist the operator on all GCI, GCI-type and all other similar cranes.

Section 7.12 (A) START-UP TIME (Equipment Not Requiring Oilers): For all cranes, shovels, draglines, derricks, backhoes (excluding tractor type backhoes) and concrete pavers where an oiler is not required, the operator of such equipment shall be paid an additional thirty (30) minutes of pay at one and one-half (1½) times his/her regular rate of pay for oiling his/her

machine before or after his/her regular work shift. The time must be put in before or after the regular work shift in order to be eligible for this pay.

Section 7.12 (B) MACHINE MOVEMENT: When machine movements to the project, from the project, and around the project site necessitate a second employee, such employee will be a member of the bargaining unit.

Section 7.13 MASTER MECHANIC OR FOREMAN: On all gas, atomic, nuclear, and steam power plants, hydro electric plants, defense plants, earth dams, river flood control projects, where ten (10) or more operating engineers exclusive of oilers are employed by a single Contractor, and on project-specific agreements where an Employer utilizes six (6) or more cranes of 100 tons or larger capacity, that Contractor shall employ a Master Mechanic/Foreman for each shift worked. On the aforementioned projects, the Master Mechanic/Foreman and the Job Steward shall be in attendance for all hours worked by the crew. The Master Mechanic/Foreman may be assigned additional duties by mutual agreement of the Employer and Union.

Section 7.14 PRE-JOB CONFERENCE: The Contractor shall communicate with the Union prior to starting work on any project and the Contractor and the Union shall jointly establish a time and place for a Pre-Job Conference. The Union shall reserve the right to withhold the services of members of the bargaining unit employed by the Contractor and the subcontractors until a Pre-Job Conference is held.

Section 7.15 STEWARD CLAUSE: The Contractor agrees to recognize the right of the Union to select a steward from the working force on the job site. A stew-

and shall be required to do a full day's work. The Union and the Contractor shall determine the steward's duties at the Pre-Job Conference.

Section 7.16 (A) PERSONNEL HOIST AND MATERIAL HOISTS: Material hoists used in the hoisting or lowering of materials or rubbish shall be assigned to and operated by a member of the bargaining unit while they are in operation. Personnel hoists when operating, shall be assigned to an Operating Engineer and be operated by a member of the bargaining unit.

(B) ELEVATOR: The operation of the elevator is exclusively the craft work of the Operating Engineers and assignment of said operation shall be made to an Operating Engineer, dispatched and covered by the terms and conditions of this Agreement. On jobs or projects where the use of an elevator is not of sufficient quantity to warrant the employment of an operator, the Contractor or Contractor Representative will contact the Union District Business Representative of the Operating Engineers and if mutually agreed, then and only then, may the Contractor use another employee to perform said work.

Section 7.17 HELICOPTERS: When helicopters are used in the hoisting, lowering of materials, or in the erection or dismantling of machinery, an Operating Engineer will be assigned to the project during the functional operation of the helicopters.

Section 7.18 JACKS: Motor or engine operated jacks or consoles used at the project site in post tensioning, prestressing or slipform construction work shall be assigned to and operated by an Operating Engineer.

Section 7.19 NUMBER OF MACHINES: Operators assigned to certain equipment shall not be required to operate more than two (2) machines in any one day. If the rate applicable to one machine is higher than the other, the higher rate shall apply and be paid for the full shift. This restriction shall not apply to small equipment such as pumps, welding machines, generators under 150 KW, compressors under 400 CFM, small conveyors, mixers under 14S, heaters or any other small equipment not specifically named in other parts of this Agreement.

Section 7.20 ACCESS TO SITE: Authorized representatives of the Union shall have access to all projects provided, however, that they report their presence to the Contractor or their immediate representative on the jobsite if necessary to check the workers during working hours. Contractors will endeavor to supply adequate passes if possible.

Section 7.21 METHOD OF PAYMENT: A Contractor shall pay once a week on a calendar week basis. Employees will be furnished with the following information: 1) Total hours worked or straight-time hours worked, 2) Overtime hours or overtime earnings, 3) Gross pay, 4) Total other deductions. After receiving his/her weekly wage, if an employee submits a written request for a copy of his/her weekly payroll computation, the Contractor shall provide the employee such information.

If a worker is discharged, he/she must be paid at the next regular payday. Placing the worker's check in the mail twenty-four (24) hours before the next regular payday shall be in compliance with this provision. Upon layoff or discharge, all employees shall be furnished a written slip stating the reason for discharge

or layoff. A copy of the notice shall be sent to the nearest District Union Office. In the event of non-compliance (with the pay provisions and/or separation slips) the sole remedy of the discharged employee shall be that he/she be paid for eight (8) hours commencing with the day of discharge at his/her present rate until the separation check and/or notice is personally delivered or mailed.

Section 7.22 REPAIR OF EQUIPMENT: Where work is to be done (on the job or in Contractor's yard) such as to operate, setup, or repair engines, equipment or boilers, said work or repairs shall be done by members of Local Union #139, or authorized dealers (warranty work only). The operator of that equipment shall be in attendance, at his/her regular rate of pay, repairing or assisting in the repair, or otherwise employed during the normal productive period.

Section 7.23 DRINKING WATER/SANITARY FACILITIES: The Contractor shall be required to furnish fresh drinking water and sanitary drinking cups at all times. The Contractor shall also provide adequate toilet facilities.

Section 7.24 TRANSPORTATION: No member of the bargaining unit shall be required to own or furnish pickups or other such transportation equipment as a condition of employment. Whenever because of remoteness of parking areas, hazardous road conditions, or security restrictions, the Contractor is required to furnish transportation for workers within the job site to the place of their work, the project management and Union will meet to establish any special conditions surrounding such personnel haul operation. When the Contractor furnishes such transportation to the employee without cost to him/her, the

equipment shall include seats and protection from the elements, and definite pickup and discharge points shall be determined.

Section 7.25 PARKING: The Contractor shall provide adequate parking for all operating engineer employees on or near the Contractor's job site, subject to the Pre-Job Conference.

Section 7.26 TOOLS: (A) Mechanics shall not be required to furnish socket tools larger than one half ($\frac{1}{2}$) inch drive capacity, or wrenches of one and one-fourth ($1\frac{1}{4}$) inch capacity.

(B) When employees furnish their own tools and leave such tools on the employer's premises (or mechanics service truck) or jobsites, these tools will be insured or replaced by the employer against theft, fire or damage caused by misuse by other employees, provided that the employee has provided an itemized list of the tools and their current replacement value to the employer.

Section 7.27 TIME OFF FOR UNION DUTIES: When an engineer or any member of the bargaining unit has been elected or appointed by his/her Local Union as a delegate to conventions, conferences, or any other Union sponsored activity, the Contractor agrees to arrange time off for the employee without pay. His/her employment and job status will remain the same. If necessary the Local Union shall provide an excuse in writing for his/her absence and the Union will endeavor to supply a qualified replacement.

Section 7.28 MOVEMENT OF EQUIPMENT: When it is necessary for the Contractor to have the operator move his/her piece of equipment from one job site to another during the workday, the Contractor will transport him/her to his/her private transportation and the

Contractor will pay him/her continued time.

Section 7.29 REGULAR ASSIGNED ENGINEERS:

The engineer, or crew, regularly assigned to a piece of equipment shall be given preference when this piece of equipment is required to work on a regular workday, Saturdays, Sundays, and Holidays, or other overtime. When the equipment to which such engineer or crew is assigned is utilized, and the engineer or crew is not given preference, such engineer or crew shall be paid for all hours that the machine has worked.

Section 7.30 LEASING: The Contractor shall not assign bargaining unit members to operate or perform bargaining unit work on equipment owned or leased by any third party employer who is not signatory to this agreement unless the equipment has been bought or leased from the contractor by the third party employer. The Contractor shall not use any leasing device to or from a third party to evade this Agreement.

Section 7.31 APPRENTICES: The use of apprentices shall be encouraged and promoted. Apprentices will be excluded from the terms as provided for in Article IX, Section 9.3, Servicing Other Crafts. The standards for apprenticeship shall be set and maintained by the Board of Trustees of the Joint Apprenticeship and Training Committee. It is agreed and understood by and between the Union and the Contractors that the ratio of apprentices and journeyworkers will be subject to review by the JATC Board of Trustees on an annual basis.

RATIO OF APPRENTICES TO JOURNEYWORKERS

One apprentice will be allowed as long as there is one journeyworker. A second apprentice will not be allowed until there are eleven journeyworkers. An additional apprentice will be allowed for each addition-

al ten journeyworkers. This ratio will be based on the employer's total operating engineer work force and not on a per job basis.

Apprentice wages are structured as follows:

Pay Period	Wage Rate (based on Class 3)
First 1,500 Hours	60% + *10% = 70%
Second 1,500 Hours	65% + *10% = 75%
Third 1,500 Hours	70% + *10% = 80%
Fourth 1,500 Hours	80% + *10% = 90%

*Additional 10% is added for related instruction pay

Section 7.32 FOREMEN: Except as provided for in Section 7.13, when in the Contractor's opinion, the crew is large enough to require the services of an equipment foreman, such foreman shall be a member of the craft and shall be employed under the terms and conditions of this Agreement.

Section 7.33: WAGE DETERMINATION FORMS. Contractor agrees to fill out all Federal and State Wages Determination Request Forms which may be sent to them and furnish the Union a copy of same.

ARTICLE VIII ENFORCEMENT

Section 8.1 It is understood and agreed by and between the parties that there shall be neither strikes nor lockouts because of disputes, disagreements or differences concerning the interpretation or application of the terms and provisions of this Agreement. Excepting those instances provided otherwise in this Agreement, such disputes, disagreements, or differences shall be resolved as hereinafter provided for.

Section 8.2 A grievance must be filed in writing by the Contractor, or the Union, within ten (10) days of the date the matter is brought to the attention of either party (copy sent to ACEA office).

Section 8.3 All grievances, disputes or complaints of violations of any provisions of this Agreement shall be submitted to final and binding arbitration by an arbitrator from the Federal Mediation and Conciliation Service. Notice of the grievance dispute shall be given to the Contractor or as applicable to the Headquarters Office of the Union at least ten (10) days before serving of the demand for arbitration in order to permit efforts to adjust the matter without litigation. The arbitrator shall be a construction oriented arbitrator registered with the Federal Mediation and Conciliation Service. The arbitrator shall have the sole and exclusive jurisdiction to determine the arbitrability of such dispute as well as the merits thereof. Written notice by certified mail, return receipt of a demand for arbitration shall be given to the Contractor or as applicable to the Union at its headquarters' office. The Contractor or the Union shall agree in writing within seven (7) days to arbitrate the dispute.

Both parties shall cooperate to have the case heard by an arbitrator within seven (7) days of the written agreement to arbitrate, provided an arbitrator is available. The arbitrator shall have the authority to give a bench decision at the close of the hearing, unless he/she shall deem the issues to be unusually complex, and thereafter he/she shall reduce the award to writing. *Grievances over discharge or suspension* shall be filed no later than ten (10) calendar days after the matter is brought to the attention of the Business

Representative of the Union.

Section 8.4 In the event the arbitrator finds a violation of the Agreement, he/she shall have the authority to award back pay to aggrieved person or persons on the referral list in addition to whatever other or further remedy may be appropriate.

Section 8.5 In the event a Contractor or the Union does not agree to arbitrate a dispute within seven (7) calendar days or does not cooperate to have the case heard within seven (7) calendar days after the written agreement to arbitrate or does not comply with the award of the arbitrator, the other party shall have the right to use all legal and economic recourse.

Section 8.6 All expenses of the arbitration except the attorney's and witness' fees shall be shared equally by the Union and Contractor involved.

**MASTER BUILDING AGREEMENT — AREA I
ARTICLE IX
CLASSIFICATION & WAGE RATES**

**Section 9.1
CLASSIFICATION:**

***Wage Rate
Effective
6/1/2003**

***Wage Rate
Effective
6/1/2004**

***Wage Rate
Effective
6/1/2005**

1. (A) Cranes, Tower cranes and Derricks with or without attachments with a lifting capacity of over 100 tons or Cranes, Tower cranes and Derricks with boom, leads, and/or jib lengths measuring 176 feet or longer, Boring machines (directional), Master mechanic or Foreman. There will be a premium of the higher of \$.50 per 100 ton or per one hundred feet of boom (or any portion thereof) for the length of boom over 200 feet or lifting capacity of the crane over 200 tons to a maximum of 500 tons or 500 feet. If CCO certification is required by owner of project a ten (10) cent per hour increase will be paid for all cranes. (Contracts let after June 1, 2003)

\$29.79

1. (B) Cranes, Tower cranes and Derricks with or without attachments with a lifting capacity of 100 tons or under or Cranes, Tower cranes, and

Derricks with boom leads and/or jib lengths measuring 175 feet or under and Backhoes (excavators) 130,000 lbs. and over, Caisson rigs, Pile drivers and Boring machines (vertical or horizontal), versi-lifts, tri-lifts, and gantrys (over 20,000 pounds). If CCO Certification is required by owner of project a ten (10) cent per hour increase will be paid for all cranes (Contracts let after June 1, 2003) \$29.29

1. (C) Backhoes (excavators) under 130,000 lbs., Traveling cranes (bridge type), Skid rigs, Dredge operator, Concrete paver (over 27E), Concrete spreader and distributor, Fork lift (machinery moving/steel erection), Hydro-blasters (10,000 psi and over), telescopic material handlers \$28.79

2. Material hoists, Stack hoists, Tractor or Truck mounted hydraulic Backhoe, Tractor or Truck mounted hydraulic Crane (5 tons or under), Concrete pumps, Rotec type conveyors, Tractor (over 40 h.p.) Bulldozer (over 40 h.p.), Endloader (over 40 h.p.), Motor Patrol, Scraper operator, Sideboom, Straddle carrier, Mechanic and Welder, Bituminous plant and

	Paver operator, Roller (over 5 tons), Rail leveling machine (railroad), Tie placer, Tie extractor, Tie tamper, Stone leveler, Rotary drill operator and Blaster, Percussion drill operator, Air track drill and/or hammers, Trencher (wheel type or chain type having over 8-inch bucket), Milling machine, Unlicensed off-road Material haulers	\$28.50
3.	Backfiller, Concrete auto breaker (large), Concrete finishing machines (road type), Roller (rubber-tired), Concrete batch hopper, Concrete conveyor systems, Grout pumps, Concrete mixers (14S or over), Screw type pumps and Gypsum pumps, Tractor, Bulldozer, Endloader (under 40 h.p.), Trencher (chain type having bucket 8-inch and under), Industrial locomotives, Rollers (under 5 tons), Firemen (pile drivers and derricks), Personnel Hoist, Lift slab machines, Robotic Tool carrier with or without attachments	\$26.62
4.	Tamper-Compactors (riding type), Assistant Engineer, A-frames and Winch trucks, Concrete auto breaker, Hydrohammers (small), Brooms and Sweepers, Hoist (tuggers), Stump	

chippers (large), Boats (tug, safety, work barges and launch), Shouldering machine operator, Screed operator, Stone crushers and Screening plants, Prestress machines, Screed operators (milling machine), Farm or Industrial Tractor mounted equipment, Post hole digger, Fireman (asphalt plants), Air compressor (over 400 CFM), Generators (over 150 KW), Augers (vertical and horizontal), Air, Electric, Hydraulic Jacks (slipform), Skid steer loaders (with or without attachments), Boiler operators (temporary heat), Refrigeration plant/freeze machines, Power pack vibratory/ultra sound drivers and extractors, Welding machines, Heaters (mechanical), Pumps, Winches (small electric), Oiler and Greaser, Rotary drill helper, Conveyor, Forklifts, Elevators, Automatic hoist, Pumps (well points), Combination small Equipment Operators

\$21.47

Note: The length of boom on which tower crane long boom wage rate shall be based is the distance from the ground base level of the tower to the point of intersection and from the centerline of the boom to the tip of the boom. In the case of crawler or mobile cranes, where the tower crane attachment is mounted, the long boom provisions of this Agreement shall be computed from the boom pins on the rotation base to the point sheaves.

*Fringe benefits to be paid in addition to these rates.

	Effective 6/1/2003	Effective 6/1/2004	Effective 6/1/2005
1. Central Pension Fund	\$6.00		
2. Health Benefit Fund <i>(This amount includes \$.65 to pre-funding)</i>	\$6.90		
3. Skill Improvement & Apprenticeship	\$.45		
4. Vacation Fund (to be established)			
5. Administrative Dues 1.5% of total Gross Wage and Fringe Package.			
6. Industry Advancement Program/Contract Administration (IAP/CA)	\$.10	\$.11 (Including CLMC)	
7. Joint Labor Management Work Preservation Fund - See Article XVIII	\$.10		

APPRENTICE PENSION CONTRIBUTION RATES ARE AS FOLLOWS:

First 1,500 hours	\$.100
Second 1,500 hours	\$.150
Third 1,500 hours	\$.200
Fourth 1,500 hours	\$.250

Section 9.2 WAGE AND FRINGE BENEFIT ALLOCATION: It is agreed the following wage increases shall become effective on:

		6/1/04	6/1/05
Classification:	1(A)	\$1.45	\$1.50
	1(B)	1.45	1.50
	1(C)	1.45	1.50
	2	1.45	1.50
	3	1.45	1.50
	4	1.45	1.50

The Union may elect, at its option, upon at least thirty (30) thirty days' written notice prior to June 1, 2004 and June 1, 2005, to allocate any increase to any or all: 1) Hourly wage rates; 2) Health Benefits Fund; 3) Pension; 4) Vacation; 5) Administrative Dues; 6) Skill Improvement and Apprenticeship; 7) Joint Labor Management Work Preservation Fund.

The Union agrees to furnish the Associations and/or Contractor, upon at least thirty (30) days' notice, with a Hold Harmless Agreement when an Administrative Dues deduction is to be made from an employee's gross wages in the absence of a written authorization for checkoff of membership dues conforming with the provisions of Section 302(c) of the Labor Management Relations Act, as amended.

Section 9.3 SERVICING OTHER CRAFTS: Bargaining unit employees servicing other crafts for two (2) hours or more shall receive the same wage rate, vacation pay, annuity, individual account retirement fund, travel time, subsistence and overtime pay received by the craft being serviced provided, however, that is is not a lesser amount within this Agreement. This section does not apply to apprentices.

Section 9.4 TRUCK CRANE OPERATORS' TRAVEL EXPENSE: Truck crane operators requested to leave area of residence shall be paid room and board while in transit, and a receipt shall be turned in to the Company.

Section 9.5 TRAVEL, MILEAGE AND SUBSISTENCE: When an employee is required to work at a job site where he/she is required to stay overnight, he/she shall be paid room and board. The employee shall turn in expense receipts to the Employer.

Section 9.6 When an employee is transferred from one job site to another during his/her regular work shift, he/she shall receive the same rate of pay for traveling time as he/she received for productive time.

Section 9.7 WAITING TIME: Employees sent to such a distant job site and not put to work, or if the job is not ready for them to go to work, shall be paid at their straight-time hourly wage rates for such time, or such employees shall be sent back to the shipping point, with time and transportation to be paid in accordance with Sections 9.5 and 9.6.

Section 9.8 REFUSAL TO LEAVE PLACE OF RESIDENCE: Members of the bargaining unit who refuse to leave their place of residence or travel more than thirty (30) miles one way to work without room and board and travel pay shall not be discharged or discriminated against. However a worker may be laid off for such refusal.

Section 9.9 Operators working in areas where an EPA rating has been established shall receive the following premiums:

- EPA level "A" Protection — \$3.00 per hour
- EPA level "B" Protection — \$2.00 per hour
- EPA level "C" Protection — \$1.00 per hour

ARTICLE X

SEPARABILITY AND SAVINGS

Section 10.1 SEPARABILITY: If any article, section or provision of this Agreement shall be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any article, section or provision should be restrained pending a final determination as to its validity, the remainder of this Agreement shall not be affected thereby and shall stay in full force and effect.

Section 10.2 REVISIONS: In either of the events set forth in Section 10.1 above, the Associations and the Union shall enter into immediate collective bargaining negotiations for the purpose of arriving at a mutually satisfactory replacement for such article, section or provision for the remainder of the term of this Agreement or for the period of the restraint, whichever is the shorter. If the parties do not agree on a replacement within sixty (60) days after commencement of the period of invalidity or restraint, the disagreement shall be resolved under the terms of Article VIII, Enforcement.

Section 10.3 ENTIRETY OF CONTRACT: This Agreement represents the entire contract between the parties and supercedes any previous agreements, supplements or addenda, written or verbal. It is further understood that neither the Union, the Contractor nor the Associations has the right to add or subtract from the terms of this Agreement without the mutual written consent of all parties thereto.

ARTICLE XI REFERRAL

Section 11.1 When the Contractor needs additional employees for work within the jurisdiction of Operating Engineers Local No. 139, they shall give the Union first opportunity to dispatch such help, informing the Union of the location, nature and extent of the job, and shall allow forty-eight (48) continuous hours for referral of prospective employees (to exclude weekends and holidays).

Section 11.2 An Employer's request for individual operator by name will be honored providing the operator requested is presently on the out-of-work book five (5) days, and has worked under a Local 139 collective bargaining agreement within the past twelve (12) months or is employed regularly on a season-to-season basis by the requesting employer and an employer's request for an individual operator by name will be honored providing the request is submitted in writing by fax or mail within twenty-four hours.

Section 11.3 In the event the Contractor is notified that such help is not available, or in the event the employees called for do not appear for work at the time designated by the Contractor, the Contractor may hire from any other available source.

Section 11.4 Any employee who is hired in violation of this Article shall be discharged by the Contractor when the violation has been brought to their attention in writing by the Business Representative.

Section 11.5 The Contractor shall have the right to accept or reject, to employ or not to employ, any applicant referred by the Union.

Section 11.6 In the event an employee fails to report for work, becomes sick during the course of the day, or for some other reason disrupts the Contractor's work routine by not working, the Contractor shall immediately contact the Union Office to obtain a qualified replacement. While the Contractor is waiting for the replacement to arrive, they shall have the right to place a qualified worker on the equipment in order to keep the other tradespeople working.

ARTICLE XII

SECURITY PAYMENTS

Section 12.1 COMPLIANCE WITH WORKER'S SECURITY LAWS. The Contractor shall comply with all Federal and State Laws governing Worker's Compensation, Old Age Benefits, Social Security, Unemployment Compensation, and so forth.

Section 12.2 CERTIFICATE OF COMPLIANCE: In order to insure employees covered by this Agreement against the hazards of unemployment, resulting through no fault of their own, Contractors who are not automatically within the provisions of State Unemployment Acts, or required to make contributions thereunder, hereby agree to make voluntary application to the proper state authorities so as to come within the statutory provisions of the Wisconsin Unemployment Compensation and Workers' Compensation Acts relating to Contractors who are not under said Acts and the regulations promulgated thereunder, regardless of number employed. The Contractor will furnish the Union their Unemployment Insurance Serial Number. The Employer shall furnish the Union with a Certificate of Insurance upon written request from the Union.

ARTICLE XIII SAFETY

Section 13.1 WEATHER PROTECTION: From October 15 through May 1, the Contractor shall furnish adequate protection from the elements/weather, such as windshield, side curtains, winter fan. During periods of extreme heat, summer fans and umbrellas shall be utilized. On all cranes and hoists heaters will be provided (hot water, propane, or electric).

Section 13.2 PROTECTION FROM FALLING OBJECTS: The Contractor shall equip all equipment utilized in clearing, grubbing, demolition, wrecking or other work where danger exists from falling debris, with a protective canopy of approved design.

Section 13.3 ACCIDENT REPORT: In the event of an accident involving a member of the bargaining unit, appropriate reports shall be completed and a copy directed to the District Safety Representative of the Local Union.

Section 13.4 PAYMENT FOR LOST TIME (Day of Accident): When an employee leaves work to go to a physician for treatment because of an on-the-job injury he/she shall be paid for time lost provided he/she returns promptly to the job with a slip from the physician noting time of release. If the physician gives the employee a slip advising him/her not to return to work, the employee shall be paid for the whole day, not to exceed (8) hours.

Section 13.5 HARD HATS: Hard hats of approved design shall be utilized at all times. Employees to be charged for replacement unless replacement results from damage in the course of employment.

ARTICLE XIV PICKET LINE

Section 14.1 PICKET LINES: It shall not be a violation of this Agreement, and it shall not be cause for discharge or disciplinary action in the event of an employee refusing to enter upon any property involved in a primary picket line, including the primary picket line of the Union party to this Agreement, and including any primary picket lines at the Contractor's places of business and at job sites where it is engaged in its normal operations.

ARTICLE XV SHIFTS AND HOURS OF EMPLOYMENT AND OVERTIME RATES OF PAY

Section 15.1 NORMAL HOURS OF WORK: Eight (8) hours between 8:00 A.M. and 5:00 P.M. shall constitute a regular day's work and forty (40) hours shall constitute a regular week's work, Monday through Friday. All work performed in excess of eight (8) hours per day shall be paid at one and one-half (1½) times the regular rate of pay. The starting time and quitting time and hours of straight time work may be revised to comply with other crafts on the project if mutually agreed at the Pre-job Conference or if mutually agreed between the Business Manager and the Contractor at a later date on projects of at least two (2) weeks duration.

All work performed on Saturday shall be paid at one and one-half (1½) times the regular rate of pay.

Sundays and Holidays, the bargaining unit employees shall be paid two (2) times the regular rate of pay.

Section 15.2 (A) All workers, including workers reporting to work for the first time as ordered, shall report to work every morning and shall be paid two (2) hours' pay unless notified before leaving their residence not to report for work. Workers shall be required to remain on the job to qualify for the two (2) hours' reporting pay.

(B) Workers who are required to remain on the job more than two (2) hours shall receive not less than four (4) hours' pay.

(C) Workers who are required to remain on the job more than four (4) hours shall be paid for not less than eight (8) hours.

(D) Workers shall be required to remain on the job to qualify for payment under the above conditions.

(E) All members of the bargaining unit who start their machines or boilers on any job and operate same shall receive not less than four (4) hours' pay.

Section 15.3 REQUEST TO REMAIN ON THE JOB: All employees shall be paid for all time requested to stay on the job.

Section 15.4 For all time worked on Sundays and Holidays, the workers shall be paid twice the regular rate of pay. For the purposes of this Agreement, the following days are stated to be Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

No work shall be done on Labor Day except in extreme emergencies.

Section 15.5 (A) A shift for the purpose of this Agreement shall mean one or more crews of workers working on a pre-arranged schedule for hours other than the normal work day as provided for in this

Agreement.

(B) Shift work must start no later than 8:00 A.M. When three shifts are scheduled, the first shift shall work eight (8) hours and receive eight (8) hours' pay at the regular straight time rate. The second shift shall work seven and one-half (7½) hours and receive eight (8) hours' pay at the straight time rate, and an additional fifty (50¢) cents per hour. The third shift shall work seven (7) hours and receive eight (8) hours' pay at the straight time rate and an additional seventy-five (75¢) cents per hour. There shall be a one-half (½) hour unpaid lunch break near the mid-point of each shift.

(C) When two shifts are scheduled, the first shift shall start no later than 8:00 A.M. The first shift shall work eight (8) hours and receive eight (8) hours' pay at the regular straight time rate. The second shift shall work eight (8) hours and receive eight (8) hours' pay at the regular straight time rate and an additional one dollar and twenty-five cents (\$1.25) per hour. There shall be a one-half (½) hour unpaid lunch break near the mid point of each shift.

(D) An employee covered by this Agreement working on one shift and substituting for another employee covered by this Agreement on another shift shall be paid double time.

(E) Arrangements may be made by the Contractor and the Business Representative to work overtime on a multi-shift job or to change the starting time for the first shift.

Section 15.6 SHIFT WORK OUTSIDE NORMAL WORK HOURS: Single shift operations between 12:00 Midnight Sunday and 8:00 A.M. Saturday, the shift shall consist of eight (8) hours' work at the

straight time hourly wage rate; however, a single shift starting after 3:00 P.M. shall be compensated by an additional two (2%) percent above the operator's classification rate per hour. Shift starting after 11:00 P.M. shall be compensated by an additional four (4%) percent above the operator's classification rate per hour. All work performed outside of the designated shift shall be paid for at overtime rates.

Section 15.7 SINGLE SHIFT LUNCH: The lunch period must be taken at mid-shift. Should it be necessary for the operator to work through the lunch period or work any part of the lunch period, he/she shall be paid double (2) time for the lunch period, and he/she shall be allowed fifteen (15) minutes for lunch not to exceed one (1) hour after mid-shift.

ARTICLE XVI FRINGE BENEFIT FUNDS

Section 16.1 CONTRIBUTIONS: During the life of this Agreement, the Contractor shall make contributions to the several Trust Funds set forth in Section 16.2 for all hours for which employees covered by this Agreement (whether Union members or not) are paid pursuant to this Agreement in such amount per hour as is provided in Section 9.1.

In the event of the expiration of this Agreement pursuant to Article III, Section 3.1, the contributions to be made pursuant to this Article shall continue to be made until the consummation of a successor agreement, but not for more than six (6) months, following the date of expiration.

Section 16.2 TRUST FUNDS: The Trust Funds referred to in Section 16.1 and the hourly rate of con-

tribution to be paid referred to in Section 9.1 to such Trust Funds, are as follows:

- 1) Central Pension Fund of the International Union of Operating Engineers and Participating Employers.
- 2) Operating Engineers Local 139 Health Benefit Fund.
- 3) Wisconsin Operating Engineers Skill Improvement and Apprenticeship Fund.
- 4) Vacation: (to be established)
- 5) Administrative Dues: 1.5% of the total Gross Wage and Fringe Package.
- 6) Industry Advancement Program\Contract Administration (I.A.P./C.A.).
- 7) Joint Labor Management Work Preservation Fund.

Section 16.3 VACATION FUND: All persons, firms, or corporations who are signatory parties, or who may become signatory parties to this Agreement, shall pay into the Operating Engineer-Employer Vacation Fund for the purpose of providing vacation benefits to all eligible employees covered by this Agreement, the contribution rate specified in Article IX, Section 9.1. Vacation payments shall be considered as wages of an employee.

The Fund shall be a jointly trusteeed fund subject to the provisions of the Trust which the appointed Trustees must adopt before collection of vacation contributions.

Section 16.4 The Associations and the Contractor hereby agree to be bound by the Trust Agreements and amendments thereof, which establish and govern the Trust Funds referred to in Section 16.2. The Association and the Contractor designate as their representatives on the Board of Trustees of such Trust

Funds, such Trustees as have been named and appointed pursuant to said Trust Agreements as Employer Trustees, together with their successors selected in the manner provided in such Trust Agreements. The Association and the Contractor hereby ratify all actions already taken or to be taken by such Trustees within the scope of their authority.

Section 16.5 TIME OF PAYMENTS AND LIQUIDATED DAMAGES: Payments to the Trust Funds specified in Section 16.2 shall be at the end of each month, but no later than the 15th day of the following month, after which the payments will be considered delinquent. In the event a Contractor remains delinquent until the first day of the month following the due date of their payments to such a Trust Fund, such Contractor shall be assessed liquidated damages and interest as determined by the Trustees. It is agreed that this assessment represents the costs to the Trust Funds because of the delinquent contributions.

Section 16.6 ENFORCEMENT: (A) The Contractor shall promptly furnish to the Trustees of any of the Trust Funds specified in Section 16.2 or their authorized agents, on ten (10) days notice, all necessary employment, personnel or payroll records relating to its former and present employees covered by this Agreement, including any relevant information that may be required in connection with the administration of the Trust Funds. The trustees, or their authorized agents, may examine such employment, personnel or payroll records whenever such examination is deemed necessary by the Trustees or their authorized agents.

(B) The Trustees of such Trust Funds may, for the purpose of collecting any payments required to be made to such Trust Funds, including damages and

costs, and for the purpose of enforcing the rules of the Trustees concerning the inspection and audit of payroll records, seek any appropriate legal, equitable or administrative relief and they shall not be required to invoke or resort to the grievance or arbitration procedure otherwise provided for in this Agreement. In the event of the commencement of any legal, equitable or administrative action for any of the purposes set forth in this Section, the Contractor involved shall pay to the respective Trust Funds all incurred attorneys' fees, court reporter fees, filing fees, the costs of effecting service of papers, the cost of special (non-routine) audits of payroll records and the costs of auditor's services involved in such legal procedures as may be deemed necessary by the Trustees, providing such Contractor is found to be delinquent.

Section 16.7 REMOVAL OF EMPLOYEES: If the employees are removed from the job by the Union to enforce payments, liquidated damages or assessments, the employees shall be paid by the delinquent Contractor for not more than ten (10) working days at the straight-time hourly rate.

Section 16.8 BOND REQUIREMENTS: The Trustees of any employee benefit for which contributions are required hereunder may require for good cause, that any particular Contractor maintain during the term of this Agreement a surety bond in the amount of Fifty Thousand (\$50,000) Dollars to guarantee the payment of such contributions.

In the event of failure, default or refusal of the Contractor to meet their obligations to their employees or the Pension Fund and Health Benefit Fund, when due, the Trustees of the Pension Fund and Health Benefit Fund may, after written notice to the

Contractor file claim to obtain payment, costs and reasonable attorney's fees therefrom of the applicable surety bond.

Failure of a Contractor to obtain and maintain an effective surety bond as required herein, or failure and default by a Contractor of payment or obligations covered by this Agreement in excess of the amount of the surety bond may, at the option of the Union, be declared by the Union a gross breach of this Agreement in consequence of which the Union shall have the right to resort to economic and other sanctions against the said Contractor.

Section 16.9 NATIONAL HEALTH INSURANCE: The parties agree that in the event the United States Government establishes a National Health Insurance Program to which the Contractor is required to contribute and which duplicates coverage of the present health program established by this Agreement, the parties will meet to renegotiate the provisions of the federal law and the effect of the law upon the benefits and contributions in effect at that time. In no event shall the level of benefits in existence on the effective date of the law be reduced.

ARTICLE XVII

ADMINISTRATIVE DUES

Section 17.1 ADMINISTRATIVE DUES: During the term of this Agreement, in accordance with the terms of an individual and voluntary written authorization for checkoff of membership dues in form permitted by the provisions of Section 302(c) of the Labor Management Relations Act, as amended, the Contractor shall deduct each week from the wages of all employees covered by this Agreement, as Administrative Dues in

the amount designated by the Union.

Said amounts shall be remitted to the Local Union as Administrative Dues and the reporting of these amounts shall be made in the same manner and on the forms provided for the payment of fringe benefit contributions. Amounts deducted by the Contractor for the current month shall be forwarded to the Local Union, together with the report forms which have been furnished, by the end of each month, but no later than the 15th day of the following month, after which payments will be considered delinquent.

In the event that the Contractor has deducted the Administrative Dues from the employee's wages in accordance with this Section, and fails to remit dues as required herein, the Contractor shall be liable for any claim and/or cost of collection that may arise on account of such non-payment. It is further agreed that the Union shall have the right to strike to collect delinquencies in the payment of Administrative Dues.

Section 17.2 INDEMNITY: The Union hereby agrees to protect, defend, indemnify and hold harmless any Contractor who is party to or is bound by this Agreement against any and all loss, damages, costs and expenses (including reasonable attorneys' fees) and against, of and from any actions, demands, claims and all causes of action or other forms of liability asserted by any person or governmental agency that may arise out of or by reason of action taken by any Contractor in agreeing to and complying with the provisions of Section 17.1.

ARTICLE XVIII
JOINT LABOR MANAGEMENT WORK
PRESERVATION FUND

Section 18.1 During the life of this Agreement there shall be a Ten (10¢) Cents per hour contribution for all hours worked under the terms of this Agreement paid to the Joint Labor Management Work Preservation Fund which is already in existence. Checks shall be made payable to the Joint Labor Management Work Preservation Fund and sent with the Operating Engineers Health Benefit Fund Report, P.O. Box 2088, Dept. 920, Milwaukee, Wisconsin 53201-2088.

ARTICLE XIX
SUCCESSORSHIP

Section 19.1 This Agreement shall be binding upon the parties hereto, their successors, administrators, executors and assigns. In the event the Contractor shall decide to sell or transfer the business or any parts thereof covered by this Agreement, the Contractor will thereupon notify the Union in writing. Nothing in this Agreement shall be construed to prevent a Contractor from terminating all or part of their business, following prior notice to the Union.

ARTICLE XX
MAINTENANCE OF STANDARDS

Section 20.1 *The Contractor agrees that all conditions of employment in their individual operation relating to wages, fringes and overtime differentials shall be maintained at not less than its highest standards in effect at the time of the signing of this Agreement.*

ARTICLE XXI
**INDUSTRY ADVANCEMENT PROGRAM/
CONTRACT ADMINISTRATION**

Section 21.1 During the life of this Agreement, each Contractor covered by or subject to this Agreement, shall pay to the Industry Advancement Program/Contract Administration (hereinafter referred to as IAP/CA) Fund, for each employee covered by or subject to this Agreement, the amount of ten (10¢) cents per hour and (eleven (11¢) cents per hour after June 1, 2004) for all hours worked by such employee. These payments shall be made no later than the fifteenth (15th) day of each month following the month for which payment is to be made. Payments are to be mailed to P.O. Box 507, Brookfield, WI 53008-0507.

Section 21.2 (A) The IAP/CA Fund assets may be utilized for the purpose and uses contemplated by the IAP Agreement and may also be used for activities pertaining to the administration of labor agreements which require contributions to the IAP/CA Fund and related operations. The one (1¢) cent added June 1, 2004 will be for the employers portion of the Construction Labor Management Council.

(B) It is further understood that the Contractor contributions of ten (10¢) cents per hour, or eleven (11¢) cents per hour, as required by Section 21.1 of this Article shall not be referred to or considered as wage or fringe benefit payments.

Section 21.3 In the event a Contractor becomes delinquent in their payments to the IAP/CA Fund, and after the Allied Construction Employers Association, Inc. (ACEA) Board of Directors has advised the delinquent Employer, in writing, of said delinquency and in view of the fact that the anticipated and actual dam-

ages are difficult or incapable of accurate ascertainment in such event, such Contractor may be assessed by the Board of Directors, as liquidated damages, 20% of such delinquent payments and further such delinquent Contractor shall be required to pay interest at the maximum rate permitted by law, not to exceed one and one-half (1½) percent per month on the unpaid and delinquent balance (including unpaid past due liquidated damages, if any) owed. In the event that the ACEA refers the delinquency to legal counsel for collection, then such Contractor shall be obligated to pay, in addition to such liquidated damages and interest charges, reasonable attorney's fees and any other costs and expenses, reasonably arising in connection with any collection action.

Section 21.4 If the employees are removed from the job by the Union to enforce payments or liquidated damages assessments, the employees shall be paid by the delinquent Contractor for all lost time at the straight-time hourly rate.

Section 21.5 The ACEA or its officers, may for the purpose of collecting any payments required to be made to the IAP/CA Fund, including damages and costs, and for the purpose of enforcing rules concerning the inspection and audit of payroll records, seek any appropriate legal, equitable and administrative relief, and they shall not be required to invoke or resort to the grievance or arbitration procedure otherwise provided for in this Agreement.

Section 21.6 Each Contractor who is required to make payments to the IAP/CA Fund pursuant to Section 21.1 of this Article shall promptly furnish to the ACEA or to its authorized agents, on demand, all necessary employment, personnel and payroll records

relating to its former and present employees covered by this Agreement, including any relevant information that may be required in connection with the administration of the IAP/CA Fund and for no other purpose. The ACEA, or its authorized agents, may examine such employment, personnel, or payroll records whenever such examination is deemed necessary by the ACEA, or its authorized agents, in connection with the proper administration of the IAP/CA and of the IAP/CA Fund.

ARTICLE XXII
SUBSTANCE ABUSE TESTING AND
ASSISTANCE POLICY

The term "Contractor" or "Company" or "Employer" when used herein refers to the construction industry contractors who are signatory to this Agreement. The term "Employee" when used herein refers to the construction industry employees who are members of the Union, while covered by this Agreement. The term "worksite" or "premises" includes all property, equipment and vehicles under the control of the Company. Should any dispute arise with respect to the application or implementation of this Policy, such disputes shall be filed in accordance with the grievance and arbitration provisions contained within the Agreement.

I. PURPOSES

- A. To establish and maintain a safe, healthy working environment for all Employees;
- B. To ensure the reputation of the Contractors, their products and services, and their Employees within the community and industry at large;
- C. To reduce substance abuse related accidental injuries to persons and property;
- D. To reduce substance abuse related absenteeism and tardiness, and to improve productivity;
- E. To provide rehabilitation assistance for qualified and eligible Employees who seek help;
- F. To protect liability because of injuries or accident caused by individuals using alcohol or drugs at work.
- G. To deter individuals from bringing, possessing or using alcohol or drugs in connection with work;

- H. To clearly state the commitment of the Contractors and the Union to a workplace free from the effects of illegal drug use; and
- I. To comply with any law or regulation requiring the implementation of alcohol or drug programs.

II. POLICY

A. General Provisions

1. **The Contractor prohibits the use, possession, concealment, transportation, promotion, distribution or sale on its premises or worksites of alcohol and illicit drugs. Employees must not report to work, or be on work premises at any time, while impaired by alcohol or any drug (including prescription and non-prescription drugs, as well as designer and look-alike drugs).**
2. **Legally prescribed drugs may be permitted on Company premises or worksites provided the drugs are contained in the original prescription container and are prescribed by a licensed physician for the current use of the person in possession of the drug.**
3. **Because some prescription and over-the-counter drugs can impair a worker's ability to perform safely, all Employees are required to report to an authorized agent of the Company, the use of any prescription or over-the-counter drugs which can adversely effect work performance, or behavior, or both. Employees should request such information from their prescribing physician. Failure to provide such information to the authorized agent of the Company may be grounds for**

disciplinary action. The disclosure of the use of any physician prescribed, or over-the-counter, drugs which can adversely effect work behavior, job performance, or both, shall be kept confidential. In the event an Employee is found in possession of a drug which has not been reported to the authorized agent of the Company, the Contractor retains the right to request a letter from the Employee's physician explaining any effects the drug may have on the ability of the Employee to perform assigned duties. Any such letter shall be provided only to an authorized agent of the Company and shall be kept confidential in accordance with the terms of this Policy.

4. The Contractor reserves the right to conduct any alcohol or drug testing mandated by law, and to incorporate any changes to the law into the terms of this Policy without further need for re-drafting. In such case, the Company reserves the right to apply the amended government regulations immediately, and shall notify the Employees and the Union of any changes to this Policy.
5. At the discretion of the Contractor any persons found in possession, offering for sale, purchasing or distributing any illegal drug will be reported to the civil authorities.
6. Employees working on a federally funded project are required by law to report any conviction of a violation relating to a criminal drug statute occurring in the workplace to their superior within five days of such conviction.
7. Where an owner or contracting agent requires

alcohol or drug testing of Contractor Employees other than is provided for in this policy, the Contractor may implement the required program for the project. In the event that a Contractor becomes obligated to comply with such a program, the Contractor shall notify the Employees and the Union of this requirement.

8. Prior to being tested, an applicant or Employee must sign a consent and release form authorizing and agreeing to the test. The consent and release forms are attached to this Policy as Exhibit A and Exhibit B.
9. The parties recognize that drug testing may reveal information of a highly personal private nature unrelated to the employment of the Employee or any other legitimate concern of outside parties. Therefore, to protect the Employee's rights, any test results shall be disclosed only to the Employee, the authorized agent of the Contractor, or upon written authorization from the Employee, the authorized agent of the Union. Confirmed test results shall be reported as either "negative" or "positive," quantitative levels will not be disclosed unless otherwise required by law.
10. Bargaining Unit members whether Employees and/or prospective Employees shall receive their normal contractual wage and benefits for all time and costs related to employer-mandated substance abuse testing. Persons who test positive shall receive no reimbursement.

B. Post-Hire Screening

1. Reasonable suspicion testing may be conducted on any Employee who reports to work and whose supervisor has reasonable suspicion to believe that the Employee is under the influence of alcohol or any drug. Reasonable suspicion is a belief based on direct observations of the appearance or behavior of an Employee, or other evidence, sufficient to lead a prudent or reasonable person that an Employee is under the influence and exhibits such traits as slurred speech, inappropriate behavior, decreased motor skills, etc. Such observations must be personally observed and documented by at least one Company official who has received training covering the physical, behavioral, speech, and performance indicators of probable drug or alcohol use. Whenever practical, the Employee should be observed by more than one individual.
2. Post accident testing may be conducted where an Employee caused, or whose actions can not be discounted as having been a factor in causing a work related accident. The Employee may be suspended without pay pending results of such testing.
3. Where required by law, a pre-duty drug test shall be administered to all Employees who may be called upon to perform a safety sensitive function as defined by the DOT during the course of their employment. Prior to taking pre-duty drug test, the employee will be given instructions which will include an explanation

of the collection procedures for each test and the consequences of a verified positive test result.

4. Drug tests conducted under the terms of this Agreement require Employees to provide a specimen of their urine. All drug testing shall be conducted by qualified persons, in the same manner as the testing procedures set forth in 49 CFR, Part 40, including the use of a Medical Review Officer, ("MRO") to verify all confirmed positive drug tests. In addition to alcohol, the substances that will be tested for are: Marijuana, Cocaine, Opiates, Phencyclidine (PCP) and Amphetamines.

Limits for each of the above listed substances will be at the "Cutoff Levels" established by the Department of Health and Human Services ("DHHS"), that are in effect on the date of the test.

5. Specimens will also be analyzed for such other substances as the DOT may from time-to-time direct, or as may otherwise be required by federal or state law. In the event that the DOT expands the list of drugs for which testing is or may be required, the Company reserves the right to begin testing immediately for those drugs, and shall notify the Employees and the Union of any changes to this Policy.
6. All drug tests will be administered using the split sample methodology set forth in 49 CFR, Part 40. In the event the primary specimen is verified as positive, the Employee will be notified by the Company's MRO of the positive

test and informed of, and given the option to have the second bottle sent to different laboratory certified by the Department of Health and Human Services ("DHHS") for analysis. To exercise this option, Employees must advise the Company's MRO of their desire to have the second sample tested within 72 hours of being told that the primary specimen was positive.

7. Testing for alcohol content will be done by a Screening Test Technician ("STT") or Breath Alcohol Technician ("BAT") using a saliva swab or Evidential Breath Testing ("EBT") device. A positive test result for alcohol will be reflected by a blood-alcohol concentration ("BAC") equal to or greater than 0.02.
8. In the event a test result is negative, the Employee shall be immediately reinstated and paid any wages and benefits that would have been paid had the Employee's work hours not been interrupted by the test. This is considered full reinstatement.
9. In the event of a confirmed positive BAC test of between 0.02 and 0.039, the tested Employee will be suspended without pay until the next regularly scheduled work shift, but for no less than 24 hours.
10. In the event of a verified, confirmed positive test for drugs or a confirmed positive BAC test of 0.04 or greater, the tested Employee will be suspended without pay and referred to a substance abuse professional ("SAP"). Strict adherence to the treatment program requirements specified by the SAP will, for a first vio-

lation, be considered grounds to avoid severe discipline or termination, provided the Employee was not found to be responsible for, or a contributing factor in, an accident involving an injury, or damage to property; nor was involved in the theft of, or damage to, property of the Contractor or the Contractor's customer.

11. If an Employee who tested positive for substance abuse enters and completes any required or recommended aftercare program, they will be eligible for reinstatement provided the employer has work available, and the Employee has entered and successfully participated in an aftercare program recommended under the terms of this Policy.
12. All individual employee test results will be considered confidential, with the results of all individual drug and alcohol tests kept in a secure location with controlled access. The release of an employee's test results will only be granted in accordance with that person's written authorization; or as otherwise required by law.

III. COUNSELING AND REHABILITATION

- A. The Local 139 Health Benefit Fund shall develop and maintain a list of appropriate alcohol and other drug abuse treatment centers, counseling centers, and medical assistance centers.
- B. If the Employee is qualified and eligible, a portion of the expenses the Employee incurs in consultations and treatment required under this Policy, shall be borne by the applicable fringe benefit fund

referred to in the Agreement pursuant to and to the extent provided in schedules, terms and requirements as the trustees of said fund shall prepare and have available. Schedules of benefits or reimbursements shall be made available to Employees participating in such programs, by the Fund.

- C. If an Employee, participating in a non-voluntary prescribed treatment program, does not comply with the recommendations, advice or schedules established by the counseling agency, the counselor or counseling agency shall immediately advise the Contractor, the Union, and the Fund.
- D. All Employees who feel that they have developed an addiction or dependence to alcohol or drugs are encouraged to seek assistance. Requests for assistance will be handled in strict confidence by referral of the Employee to a SAP.

IV. MISCELLANEOUS PROVISIONS

- A. An appropriate notice to Employees concerning the existence of this Policy and the treatment and counseling available, as well as the penalties described above, shall be communicated to Employees covered by this Agreement.
- B. Neither the Association nor the Union shall be liable for any Employee's activities, or conduct engaged in, pursuant to this Policy.
- C. A contact list of agencies and individuals that an Employee may contact with questions regarding this Policy is attached as Exhibit C.
- D. The Contractor will bear the costs of all testing procedures except that the Employee will pay the cost of any test requested by the Employee and

any follow-up testing required as part of any rehabilitation program or by law.

V. CONCLUSION

This Policy Statement is intended to protect the Contractor's most valuable asset, namely its Employees. The health and safety of all Employees and the general public is of the utmost concern. The above presented Policy will help insure a safe work place for all.

EXHIBIT A
SUBSTANCE ABUSE TESTING
AND ASSISTANCE POLICY
GENERAL CONSENT TO DRUG AND
ALCOHOL TESTING

I hereby voluntarily consent to a saliva test or a breath test to determine my blood alcohol concentration ("BAC"), and further consent to give a sample of my urine for the purpose of urinalysis, pursuant to the provisions of the substance abuse testing and assistance policy ("Policy") which is a part of this Agreement.

I acknowledge that I have been given notice of this Policy and that I understand its provisions, including my option to have the "split sample" of my urine tested at a DHHS certified laboratory of my choice, in accordance with the provisions of 49 CFR, Part 40.

Employee Signature

Date of Test

Witness Signature

Date of Test

EXHIBIT B
SUBSTANCE ABUSE TESTING
AND ASSISTANCE POLICY
PRE-TEST CONSENT TO URINALYSIS
(To be retained by the Employee for
MRO reference purposes)

I hereby acknowledge that I have voluntarily consented to give a sample of my urine for the purpose of urinalysis pursuant to the provisions of the Substance Abuse Testing and Assistance Policy ("Policy") which is part of this Agreement.

I further acknowledge that I have been given notice of this Policy and that I understand its provisions, including my option to have the "split sample" of my urine tested at a DHHS certified laboratory of my choice, in accordance with the provisions of 49 CFR, Part 40.

Employee Signature

Date of Test

EXHIBIT C
SUBSTANCE ABUSE TESTING AND
ASSISTANCE POLICY CONTACT LIST

For Questions Regarding	Contact Name and Phone Number
Drug and Alcohol Testing Requirements	USDOT, OFFICE OF MOTOR CARRIERS <i>Bill Vickery — (608) 829-7530</i>
	WisDOT, OFFICE OF GENERAL COUNSEL <i>Joe Maassen — (608) 266-7364</i>
	WisDOT, DIVISION OF STATE PATROL <i>(608) 266-0305</i>
Drug and Alcohol Counseling and Rehabilitation Services	DHSS, DIVISION OF COMMUNITY SERVICES <i>Bureau of Community Services — (608) 266-2717</i>
Union Contact	OPERATING ENGINEERS, LOCAL 139 <i>(262) 896-0139</i>
Health Insurance and Assistant Agencies	LOCAL 139 HEALTH BENEFIT FUND <i>(262) 549-9190</i>
Medical Review Officer	

MEMORANDUM OF UNDERSTANDING

THE ASSOCIATIONS for and on behalf of the employers represented by it and **LOCAL 139** of the **INTERNATIONAL UNION OF OPERATING ENGINEERS** (hereinafter referred to as the "Union") are executing this Memorandum of Understanding with respect to the Building and Heavy Construction Agreement (Area I) entered into effective June 1, 2003 (hereinafter called "Basic Agreement"), it being understood that the agreements and understandings herein contained shall have the same effect as if contained in the Basic Agreement.

IT IS UNDERSTOOD AND AGREED by and between the Associations and the Union that, as used in Section 9.3 of the Basic Agreement, the term "wage rate" shall mean the hourly wage rate and the hourly contribution for vacations or vacation pay paid directly by the employer and from which the employer is required to deduct payroll taxes (income tax and F.I.C.A.).

Dated this 1st day of June, 2003.

**ALLIED CONSTRUCTION EMPLOYERS
ASSOCIATION, INC.**

**ASSOCIATED GENERAL CONTRACTORS OF
GREATER MILWAUKEE**

**INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 139**

RECOGNITION AGREEMENT

This Agreement is made and entered into this _____ day of _____, by and between LOCAL 139 of the INTERNATIONAL UNION OF OPERATING ENGINEERS (the "Union") and _____ (the "Employer").

The Employer acknowledges that the Union has submitted proof in the form of signed authorization cards that the Union represents a majority of the Employer's employees in the job classifications included in the bargaining unit covered by the current Agreement.

Based upon such showing, the Employer therefore voluntarily agrees to recognize and hereby does recognize, the Union as the exclusive collective bargaining agent for all such employees within such bargaining unit as provided in Section 9(a) of the National Labor Relations Act. The Employer waives any right it may have to an NLRB election to confirm the majority status of the Union.

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL UNION NO. 139

BY: _____

Title: _____

EMPLOYER:

BY: _____

Title: _____

**FOR THE ALLIED CONSTRUCTION
EMPLOYERS ASSOCIATION**

AND

**THE ASSOCIATED GENERAL
CONTRACTORS OF GREATER
MILWAUKEE**

NEGOTIATING COMMITTEE:

RICHARD PLATT
Platt Construction, Inc.

EDWARD J. HAYDEN
ACEA

GEORGE LUBELEY
The Gillen Company

TIMOTHY JUST
C. G. Schmidt

MIKE FABISHAK
AGC

**INTERNATIONAL UNION OF
OPERATING ENGINEERS
LOCAL 139**

NEGOTIATING COMMITTEE

DALE A. MILLER

TERRANCE MCGOWAN

WILLIAM FETT

TERRY J. PARE

DARRELL J. KANE

ALLAN LEIDER

**International Union of Operating Engineers Local 139
N27 W23233 Roundy Dr., Pewaukee, WI 53072
Dale A. Miller, Business Manager**
