

2006 - 2009

**Operating Engineers
Agreement**

between

**The Associated General Contractors
of America
Greater Detroit Chapter, Inc.**

and

**The International Union of
Operating Engineers
Local No. 324, 324-A, 324-B
and 324-C
AFL-CIO**



DETROIT, MICHIGAN

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2006-2009 ENGINEERS' AGREEMENT

THIS AGREEMENT, made and entered into by and between The Associated General Contractors of America, Greater Detroit Chapter, Inc., hereinafter referred to as the "Association," on behalf of its members, hereinafter referred to as "Employer" or "Employers" and the International Union of Operating Engineers, Local No. 324, 324-A, 324-B and 324-C, AFL-CIO, hereinafter referred to as the "Union."

This Agreement shall be binding in all respects upon the parties hereto effective **June 1, 2006 until June 1, 2009**, on all building and heavy construction work in the Metropolitan Area of Detroit, which is understood to mean the following seven (7) counties of the State of Michigan: Lenawee, Macomb, Monroe, Oakland, St. Clair, Washtenaw and Wayne; and thereafter this Agreement shall continue from year to year unless request is made by either party to change and/or terminate the Agreement in accordance with Section **48** thereof.

It is understood that the Association is acting only as an agent in the negotiation of this Agreement and that it is agent only for those individuals, partnerships, and corporations who have authorized it so to act, and in no event shall it be bound as principal or be held liable in any manner for any breach of this Agreement by any of the Employers for whom it is acting or any employee of such Employers. It is further agreed and understood that the liabilities of the Employers who have authorized the negotiation and execution of this Agreement are several and not joint.

Section 1. INTENT AND PURPOSE

It is the intent and the purpose of the parties hereto that this Agreement will promote and improve industrial and economic relations between the Employers and the Union in the Building and Heavy Construction Industry for the jurisdiction of the Union, excluding highway and underground work, and to set forth herein the basic agreement covering rates of pay, hours of work, and conditions of employment to be observed between the parties hereto. The Agreement shall cover and be applicable to all work performed at the site of construction including building, repair, alteration or demolition and all railroad construction work. All provisions stated hereafter requiring payment of Fringe Benefit Contributions shall apply to those employees working in Employer's Shop and/or on snow removal.

Section 2. EMPLOYMENT

(a) The Union agrees, upon proper notification to the Dispatcher or Business Manager of the Union, to furnish competent workers to any Employer who is a party to this Agreement.

(b) The Employer agrees that in the employment of workers to perform the various classifications of labor required in the work under this Agreement, which workers are hereinafter also referred to as Engineers, Operating Engineers, Operators, Firemen, Oilers, Apprentices or Employees, he will not discriminate against applicants because of membership or non-membership in the Union. The Employer agrees that, as a condition of employment, he will require each worker to become and remain a member of the Union for the term of his employment after the seventh (7th) calendar day of his employment by any Employer who is a party to this Agreement, or the effective date of this Agreement, whichever is later. The seven (7) day period following which a worker agrees to join the Union shall be computed from the second day such worker enters the employment of any Employer who is a party to this Agreement. It is agreed that "membership in good standing" shall mean only the payment of those periodic dues and fees germane to collective bargaining contract administration and grievance adjustment.

(c) The Employer shall not be obligated hereunder to discharge any employee for non-membership in the Union:

(1) If he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members; or

(2) If he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership; and

(3) Unless the Employer is furnished with a notice in writing by the Union, signed by the proper officer, and setting forth that the employee has refused to join the Union, although he has been offered membership on the same terms as other members, or that the

employee's membership in the Union has been terminated for the reason of non-payment of periodic dues or initiation fees, and that the Union requests that said employee be discharged for one of the above reasons.

(d) The Employer and the Union acknowledge that they are subject to applicable laws regarding equal employment opportunity and fair employment practices.

Section 3. JURISDICTION

(a) The jurisdiction of the Union is recognized by the Employers to be the operation of all power-driven or power-generating construction equipment used in the building or alteration of all structures and engineering works insofar as the National Labor Relations Board recognizes operation of such types of equipment as being under the jurisdiction of Operating Engineers, Firemen, Oilers, and Apprentice Engineers, rather than any other skilled trade group.

(b) This Agreement shall be binding in all respects upon the parties hereto on all building, heavy construction and residential work as hereinafter defined. The terms building, heavy construction and residential work shall include all modifications, alterations, additions, demolition, repair and all new construction work, including excavation for the building itself, all excavation and back filling within the building or building location and five (5) feet outside of the building wall, foundations, footings and piers for the building, and all railroad construction work on the jobsite.

(c) The Employer shall employ Operating Engineers for the erection, operation, and the maintenance of all hoisting and portable equipment, installation and operation of well point systems, and freeze-pipe systems used in construction work.

Section 4. JURISDICTIONAL DISPUTES.

(a) In the event of a jurisdictional dispute involving the Union, the parties shall request the other union or unions involved to send representatives to the jobsite to meet with representatives of the Union and Employer to settle the dispute. If a settlement is not reached at that meeting the Union shall request that its International Union assign a representative who shall make arrangements to meet representatives of the other International Union or Unions involved and representatives of the Employer on the jobsite to seek settlement of the dispute.

The Employer shall also request the International Union involved to assign representatives to seek settlement of the dispute. The Union and the Employer agree that there shall be no strikes, lockouts or interruption of the disputed work over jurisdictional disputes.

Section 5. CAPACITIES AND SIZES

(a) It is understood that the jurisdiction of the Union includes concrete mixers above one-half (½) yard capacity. When such mixer is used, an Engineer shall be employed. Where two (2) such mixers are operated together as a battery, one (1) Engineer shall be employed. On equipment driven by motors over five (5) horsepower, an Engineer shall be employed.

The operation of power tools such as Carpenters' saws; jack-hammers used in concrete breaking; portable concrete agitators; and such portable hand tools as are operated by power are not covered by the terms of this Agreement, except as provided under Section 3 of this Agreement.

It is further understood and agreed that where the jurisdiction, as set forth in Section 3 hereof, includes a concrete mixer of less than one-half (½) cubic yard capacity; equipment driven by motors of under five (5) horsepower; a boiler of fifteen (15) pounds pressure or under; a compressor used up to one (1) day; it shall not be required that an Engineer be employed.

(b) **Boilers.** An Operating Engineer shall be assigned to all Boilers over fifteen (15) pounds pressure used for temporary purposes, or any other purpose on a project site and the Operating Engineer shall be in attendance at all times that the boiler is operating

(c) **Air Compressors and Pumps.** It is also understood that compressors and pumps are included in the work jurisdiction of this Agreement under the following conditions:

- (1) Employees covered under this Agreement shall be employed on each power driven air compressor over 210 cu. ft. capacity.
- (2) A pump of four inch (4") discharge or over shall be operated by an Engineer. Where four (4) pumps or more of less than 4" discharge are used, an Engineer shall be required. Where three (3) or fewer pumps of less than 4" discharge are used on the

job, an Engineer or Oiler or Apprentice shall start, stop and service the pump or pumps if such employee is available on the job.

- (3) If a maintenance or repair man is required on pumps at the jobsite, he shall be an operator.

(d) **Heaters.** The Employer agrees to recognize and abide by the jurisdictional settlement arrived at between the International Hod Carriers and Common Laborers Union and the International Union of Operating Engineers on December 18, 1953, covering the operation of the Herman Nelson heater, Dravo, Warner, Silent-Glo and similar types of heaters; however, the Employer reserves the right to determine the number of employees required for such operation. When a member of the Union is assigned to work on heaters, an Oiler or Apprentice Engineer may operate such equipment.

- (1) It is agreed that when heaters are being operated by members of the Union, it shall be their duty to fill, operate and maintain the heaters in a safe and workmanlike manner.

(e) **Fork Lift.** The Employer agrees to recognize and abide by the jurisdictional settlement arrived at between the International Hod Carriers and Common Laborers Union and the International Union of Operating Engineers on February 3, 1954, covering the operation of fork-lift and similar equipment, drills and conveyors; however, the Employer reserves the right to determine the number of employees required for such operation. A fork-lift must be operated by an engineer. When a member of the Union is assigned to work on conveyors, an Oiler or Apprentice Engineer may operate such equipment.

(f) **Concrete Pumps.** All concrete pumps shall be assigned to an Operating Engineer, and an Operating Engineer shall be employed at all times that the concrete pump is operating.

(g) **Cranes.**

- (1) An Oiler shall be employed on each and every truck crane over 25 ton capacity; however, an Apprentice Engineer may be employed in lieu of an Oiler. The Oiler's or Apprentice Engineer's starting time and lunch period can be scheduled by the Employer to start one-half (1/2) hour before the Engineer's starting time and lunch period time; in which time, the Oiler or

Apprentice can check gas, oil and other items, and warm up the engines and also oil, grease and check equipment while the Operator is on his lunch period.

- (2) When there are two (2) or more crawler cranes, derricks or tower cranes on the same job for one Employer, or any combination of the above named machines, for a total of two (2) machines, an Oiler or Apprentice Engineer shall be employed in addition to the Operator; and, for each additional combination of two (2) machines, an additional Apprentice Engineer or Oiler shall be employed. Crawler cranes are defined as including gas, diesel, air or electric crawler cranes when equipped with a shovel front, draglines, clamshell, backhoe, shear, grapple, compactor, or demolition attachment.
- (3) A Fireman must be employed on each steam shovel, steam dragline, steam clamshell or steam crane.
- (4) **Compressor Mounted on Crane.** On pile driving machines that have an air compressor mounted on the pile driving machine, it will be required that an Operating Engineer and Air Compressor Operator be employed. However, an Oiler shall not be required in addition to the two (2) Operators named above, and the Operating Engineer shall be paid the equivalent of one (1) hour's pay for greasing time, in addition to the regular eight (8) hours' pay per day.

On pile driving machines that have both an air compressor mounted on the pile driving machine and a hydraulic power unit for the operation of a drill, one person shall be employed to operate both the mounted air compressor and the hydraulic power unit and that person shall be paid the Regular Engineer wage when operating both the mounted air compressor and the hydraulic power unit.

- (5) When an individual Employer is employing a third-year Registered Apprentice, the Employer may at the Employer's option when adding the sixth piece of equipment retain such

third-year Apprentice to operate light equipment.

(h) **Jacks.** Motor or engine operated consoles or Control Panels used at the project site on slip form construction work shall be assigned to and operated by an Engineer.

(i) **New Equipment.** Should new 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 Employers party to this Agreement, shall meet and agree on the wage rate to be paid for its operation. If the parties are unable to agree on a wage rate, the issue shall be submitted to arbitration under the provisions of Section 40.

Section 6. CHANGE OF MACHINES

(a) An employee shall be permitted to make not more than two (2) changes per working shift from one (1) machine or one (1) boiler to another machine or boiler provided that he is paid the higher rate of pay for the full shift if he operated equipment that has a different hourly wage rate.

(b) **Regular Assigned Engineers.** The Engineers 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. This Paragraph shall in no way restrict the Employer's right to transport its equipment with any Operating Engineer.

Section 7. REPAIRS – JOBSITE

NO REPAIRS shall be made on the jobsite to equipment that is being operated by employees covered by this Agreement except by or under the supervision of an employee covered by this Agreement or another Agreement with Operating Engineers Local 324, but such employee may not operate such equipment.

Section 8. WELDING MACHINES AND GENERATORS

An Operator shall be required on three (3) gasoline or diesel driven electric generators or welders through five (5) machines. When six (6) machines are used, an additional Operator shall be employed through ten (10) machines. When the eleventh (11th) machine is used, an additional Operator will be employed through fifteen (15) machines, etc.

Section 9. VERTICAL LIFTING HOISTS

It shall be further understood and agreed that all power vertical lifting hoists, without regard to horsepower capacity or engine or motor, will be operated by an Engineer.

Section 10. STATIONARY CENTRAL COMPRESSED AIR PLANT

When the Employer establishes a stationary central compressed air plant with one (1) central receiving tank, one (1) Engineer shall be required, regardless of the number of compressors used.

Section 11. PREJOB CONFERENCE

(a) Upon request of the Employer or the Union, a prejob conference shall be held. Employer shall advise the Union of the approximate number of hours and/or shifts to be worked, tentative starting date, approximate length of job and machines to be used.

(b) Where the Contractor refuses to participate in a prejob conference, the Union shall reserve the right to withhold the services of members of the bargaining unit until a prejob conference is held.

Section 12. STEWARDS

(a) The Employer recognizes the right of the Union to select a working Steward from among the members of the Union in accordance with Union procedure. The Steward's activities shall be confined to the area in which work is performed by his Employer, and to the members of the Union employed by the Steward's Employer. It is further agreed and understood that the selection of a Steward shall not increase the number of Engineers necessary to man the job, as determined by the Employer. The Steward shall be permitted sufficient time to perform his usual Steward duties with the least interference to the job.

(b) It is agreed and understood that such Steward shall not receive any extra compensation above his regular wages. A Steward shall be required to do a full day's work and shall be subject to discharge for the same reasons as applied to any other employee.

(c) The Steward shall be one of the last two employees laid off when the job

is finishing up provided he is capable of performing the required work.

Section 13. DISCHARGE OR LAYOFF

(a) When an employee covered under the terms of this Agreement is laid off for more than one (1) day or is discharged, the Employer shall pay off the employee at the time of layoff/discharge.

(a) (1) In the event a laid off or discharged employee is not paid at the time set forth above, a contractor in good standing may mail the pay-off check to the employee by certified mail (no return receipt requested) before the end of the next business day. If the check is not mailed before the end of the next business day, the employee shall be paid an additional two (2) hours pay for each twenty-four hours of delay retroactive to the day of layoff/discharge.

(a) (2) In the event a laid off or discharged employee is not paid at the time set forth above, a contractor not in good standing must have the employee's check ready by noon of the next regular workday with an added two (2) hours penalty, whether the check is picked up or mailed, at the employee's option. In the event the two (2) hours referred to above is not paid in the regular check, a penalty of an additional six (6) hours will be paid to the employee.

(b) In the event that a bank upon which the Employer draws his payroll check refuses to honor it, the Employer shall within twenty-four (24) hours thereafter issue to the employee in question, payment in cash, money order or certified check in the gross amount of said dishonored payroll check, plus twenty percent (20%) of the gross amount. In the event a payroll check is not honored at the bank due to insufficient funds, the Employer will thereafter pay in cash or certified check, if requested to do so by the Union. Under this Paragraph, certified checks or cash must be accompanied by a statement showing all deductions made and amounts to be paid to each of the Fringe Benefit Funds.

(c) At the request of an employee, the Employer agrees to furnish slips stating reason for any termination of employment, and the Employer's intention if termination is temporary.

(d) Any Employer failing to comply with the provisions of this Section shall

be guilty of a major breach of this Agreement for which he shall be refused employees by the Union and all members of the Union employed by him at the time shall be required to leave the job until this matter is resolved.

Section 14. UNION BUSINESS REPRESENTATIVE

(a) Business Representatives of the Union shall have access to all work sites at any time for the purpose of administering the terms of this Agreement and for customary and legitimate union-member consultation. This right shall not be abused and shall not interfere with the orderly operations of the Employer. Business Representatives shall comply with the Employer’s policy regarding visits at the jobsite involved.

(b) The Employer further agrees to assist in obtaining passes for Union Representatives where required.

Section 15. TRANSPORTATION AND TRAVEL TIME

(a) Northland Shopping Center located at Greenfield Road north of Eight Mile Road will be the point from where mileage is measured. Employee shall receive a travel allowance as outlined below, and he shall furnish his own transportation to and from any and all jobs and shall report for work at the regularly scheduled starting time.

| | |
|--|----------------|
| Loop Area Boundaries are Detroit River, John Lodge, Edsel Ford and Chrysler Expressways, inclusive | \$.50 per day |
| Within the 10 mile radius except for Loop Area. . . . | Free Zone |
| From 10 mile radius but within the 15 mile radius except for Loop Area | \$1.50 per day |
| Beyond the 15 mile radius but within the 20 mile radius. | \$2.00 per day |
| Beyond the 20 mile radius but within the 30 mile radius. | \$3.00 per day |
| Beyond the 30 mile radius but within the 40 mile radius. | \$4.00 per day |

Beyond the 40 mile radius but within
the 50 mile radius. \$5.00 per day

Beyond the 50 mile radius but within
the 60 mile radius. \$6.00 per day

60 miles and over. \$7.00 per day

Pontiac Motor (Proper), Fisher Body Pontiac (Proper) and Willow Run General Motors Plants (Proper) are established as being in the 20 to 30 mile zone and will be paid at the rate of \$3.00.

An employee who has been sent by the Employer, or referred by the Union at the request of the Employer, to a different job out of one shipping area into another area of Local Union No. 324, shall receive an allowance to cover his transportation and other expenses at the rate of the travel schedule of employee's original shipping point.

Employees covered by this Agreement, transferred from job to job during the regular working hours, shall receive an allowance equivalent to a regular rate of pay while traveling.

(b) No Travel Pay shall be paid when the employee starts and ends his work shift in the Employer barn or yard.

(c) When an employee drives any equipment to a jobsite or parks equipment overnight, and the equipment is to be left that night, then the Employer will provide transportation for the employee immediately at the finish of his shift back to the Employer's yard, or to the employee's car. This transportation can be by Employer's car, pick-up truck, or the Employer is to pay cab fare if cab service is available.

(d) Whenever an employee is sent out of town, and is requested by the Employer to stay overnight, the Employer agrees to reimburse the employee for his legitimate expenses in excess of the travel pay to which the employee is entitled upon presentation by the employee of proper receipts for such expenses. The Employer also agrees to provide transportation to and from temporary overnight

lodging.

(e) Travel pay shall be included in the pay envelope for every scheduled workday the employee reports to work.

Section 16. COMPLIANCE TO TERMS OF OTHER AGREEMENTS

(a) The parties hereto agree that whenever the Employer performs work covered under the Agreement between the Associated Underground Contractors, Inc., and the International Union of Operating Engineers, Local No. 324, 324-A, and 324-B, the Employer will comply with all terms and conditions of that Agreement, while performing such work.

(b) The parties hereto agree that whenever the Employer performs work covered under the Agreement between the Great Lakes Fabricators & Erectors Association and the International Union of Operating Engineers, Local 324 and 324-A, the Employer will comply with all the monetary terms and conditions of that Agreement.

(c) The parties hereto agree that whenever the Employer directs his employee, excluding operators of personnel construction elevators, to perform work in conjunction with Structural Iron Workers, Millwrights, Electricians, Pipe Fitters, Riggers, Boilermakers, Sheet Metal Workers, Plumbers and Glaziers, in excess of eight (8) hours in any calendar week, then the following shall apply, regardless of their union affiliation.

- (1) Wages — The wage provisions of the Agreement between Great Lakes Fabricators and Erectors Association and the Union shall apply to any day in which an employee actually performs work with the trades set forth above.
- (2) Holiday Pay — The Holiday Pay provisions of the Agreement between the Great Lakes Fabricators and the Union shall apply to any calendar week in which an employee actually performs work in excess of eight (8) hours with the trades set forth above and in which week one of six (6) holidays fall.
- (3) Forty Hour Guarantee — In any week in which a crane or derrick operator works in excess of eight (8) hours with the

trades set forth above during a calendar week he shall receive no less than forty (40) hour week guarantee as set forth in the Agreement between Great Lakes Fabricators and the Union provided, however, the forty (40) hour guarantee shall not apply to a calendar week in which a job is completed and the machine to which the Operator is assigned is returned to the Employer's yard. In addition when an employee loses work during a week for which he is to be paid under this forty (40) hour guarantee provision he will be paid for the lost time at the wage rate which would have applied had the employee actually worked on that day.

It is the intention of the paragraph immediately above that the Operator shall receive pay under the forty (40) hour guaranteed proposal for time lost, not of his own volition, while the machine to which he is assigned remains at the jobsite; but not for time lost while the machine is in the Employer's yard, during a calendar week in which a job begins or ends.

Section 17. PERSONAL EQUIPMENT AND JOB MECHANIC

Employees furnishing personally owned equipment at Employer's request, such as pick-up trucks, shall be paid a minimum of \$2.00 per hour for the use of same at the straight-time rate for all hours worked.

Section 18. REPORTING TIME, WAITING TIME

(a) In the event any employee is ordered to report for work on any day, but is not needed that day, he shall be paid two (2) hours for show-up time, during which time he shall do any work required in his jurisdiction, except operation of equipment. If the employee is required to stay on the job for more than two (2) hours or starts to operate machines, he shall receive not less than four (4) hours pay. Any employee performing work in excess of four (4) hours on any workday shall be paid for all hours actually worked, but in any event shall be paid not less than eight (8) hours. However, an Employer who ends the workday before the employees work in excess of four (4) hours shall not pay the entire day's pay although the shut-down of equipment occurs after the fourth hour.

(b) Employees sent to a jobsite by Local 324 where **MUST Safety Program** certification is required by either the owner employing the contractor or as otherwise required by this Agreement, must demonstrate they have the requisite

MUST Safety Program certification as required by the owner, or as otherwise required by this Agreement. All employees must be current with M.U.S.T. Drug and Alcohol Screening Program, or its successor, and must have successfully completed the requisite **MUST Safety Program** training modules to be eligible for show-up time pay. The contractor is required to provide the Union with the required specifications signed and authorized via facsimile or mail at least 24 hours prior to the request for employees.

(c) When an employee is required to report back to work the second time in the same day, after the end of a regular shift, the employee is to receive at least two (2) hours at the prevailing rate of pay, plus additional rate of Travel Pay, regardless of job location.

(d) When an employee reports to work on an overtime day, he shall be paid no less than two (2) hours at the prevailing rate. If he starts to work, he shall receive no less for four (4) hours' pay at the prevailing rate.

Section 19. CRANE OPERATOR

(a) Engineers sent to a jobsite by Local 324 where Engineers are required to be certified by the National Commission for the Certification of Crane Operators (NCCCO) by the owner employing the contractor must have successfully completed the Crane Operator Certification as of June 1, 2004, Engineers will also maintain a valid certification.

(b) All Engineers operating cranes on general construction work with boom and jib qualifying for long boom classifications shall be paid according to current wage schedules as shown in Section 27 of the collective bargaining agreement.

(c) Employees operating Tower Cranes shall be paid the crane operator rate determined by the combined length of the mast and the boom. In addition, the Engineer will receive twenty-five cents (\$.25) per hour more than the applicable Crane Operator rate if he must climb fifty (50) feet or more to his work station.

(d) Employees operating Derrick and Cranes where the operator must climb fifty (50) feet or more to his work station shall be paid twenty-five cents (\$.25) per hour more than the applicable Crane Operator rate.

Section 20. CRAFT FOREMAN AND ASSISTANT CRAFT FOREMAN

(a) Whenever there are five (5) Engineers employed by one (1) Employer on any one (1) job, per shift, there shall be a Craft Foreman employed on that job who shall be the representative of the Employer and may be assigned to operate a machine. The Craft Foreman's wages shall be at least one dollar and twenty-five cents (\$1.25) per hour more than the highest paid engineer working on the job for the same Employer.

(b) When seven (7) or more Engineers are employed on any one job per shift, the Craft Foreman shall be in charge of the Engineers and be in charge of Maintenance and Repairs of all Hoisting and Portable Machinery on the jobsite. He shall not be assigned to operate a machine. He shall dispatch equipment and Engineers, procure parts, fuel and equipment, and keep the time of Engineers. The Craft Foreman shall supervise all other operations pertinent to the trade and may delegate some of his duties to an Assistant Craft Foreman.

(c) **Assistant Craft Foreman.** On all jobsites where there are twenty (20) or more Operators per shift employed by one (1) Employer, there shall also be employed an Assistant Craft Foreman in addition to the Craft Foreman, and he shall be paid the Assistant Craft Foreman's wage rate. There shall be an additional Assistant Craft Foreman for every twenty (20) men employed by each Employer.

(d) Engineers employed on leased or rented equipment shall count toward the requirements of Craft Foreman and Assistant Craft Foreman. In addition, Engineers employed on equipment that assists the Employer's employees in the self-performance of the Employer's work and are under the direct supervision of the Employer shall count toward the requirements of Craft Foreman and Assistant Craft Foreman.

(e) The Assistant Craft Foreman wages shall be at one dollar (\$1.00) per hour more than the highest paid engineer working on the job for the same Employer.

Section 21. HOURS

(a) Day shift starting time can be any eight (8) continuous hours, except lunch period, between 6:00 a.m. and 4:30 p.m., as long as the starting time is a regular daily established practice for that job.

(b) Additional changes in the starting time in special cases may be made to

meet special conditions upon application and approval of the Business Manager.

(c) No employee shall be required after having worked sixteen (16) hours (lunch periods included) to return to work for the prevailing rate of wages without having eight (8) hours off the job.

Section 22. LUNCH PERIOD

(a) When an employee is requested to work through his regular established lunch period one and one-half (1-1/2) the straight time rate of wages shall be paid for that period of time. In addition, the employee is to be allowed one-half (1/2) hour at a later time, with pay, to eat, as soon as possible after his regular lunch period of that shift.

(b) If an employee is requested to work more than ten (10) hours, a paid lunch period of one-half (1/2) hour shall be allowed at the start of the eleventh (11th) hour. If the employee is required to work through his lunch period, he shall be paid an additional one-half (1/2) hour wage and time and one-half (1/2). The same shall apply to every four (4) hour period thereafter.

Section 23. SHIFT WORK

(a) For any shift starting at or after 4:30 p.m., whether first or second shift, a day's work shall be eight (8) hours at the wage scheduled in Section 27 of this Agreement. When a third shift is also worked, a day's work shall be seven and one-half (7-1/2) hours on the second shift and seven (7) hours on the third shift at the wages scheduled in Section 27 of this Agreement, for second and third shifts.

(b) Fringe benefits, where paid on hours worked, shall be paid for the second and third shift on the basis of eight (8) hours in order to constitute payment of a full shift's fringe benefit contribution.

(c) The wage rate between 8:00 a.m. Saturday and 8:00 a.m. Sunday shall be time and one-half (1-1/2) the applicable shift rate of pay. All overtime between 8:00 a.m. Saturday and 8:00 a.m. Sunday shall be paid at double (2) the applicable shift rate of pay.

(d) The wage rate between 8:00 a.m. Sunday and 8:00 a.m. Monday, or on Holidays, shall be double (2) the applicable shift rate of pay.

Section 24. OVERTIME

(a) One and one-half (1-1/2) the straight-time wage rate shall be paid for the first two (2) hours of premium time worked per shift per day, Monday through Friday. Work performed beyond the first two (2) hours of premium time per shift, Monday through Friday, shall be paid at double (2) the straight-time wage rate.

(b) Work performed on Saturday during a first shift, second shift, or third shift, shall be paid at time and one-half (1-1/2) the applicable shift rate of pay. Work performed on Saturday beyond the end of a shift shall be paid at double (2) the applicable shift rate of pay.

(c) All work performed on Sunday shall be paid at double (2) the straight-time wage rates.

(d) **Holidays.** Double (2) time shall be paid for work performed on the following named Holidays: New Year's Day, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day. (See Greasing Time, specified in Section 27.)

Section 25. PAYCHECKS AND CHECK STUBS

(a) Employees shall be paid once each week on the payday that is established by the Employer. Employees shall be paid in United States currency or check on a Michigan bank and the Employer agrees that payroll checks will be at the jobsite no later than two (2) hours after the start of the shift on payday so that employees may receive their checks before leaving the jobsite when they are not required to start work, provided, however, alternate mutually agreed to arrangements for obtaining payroll checks, **such as direct deposit into an account designated by the employee,** may be made between employees and the Employer. **When direct deposit is used, pay stubs will be mailed no later than the next business day.**

(b) PAY STUBS and/or other forms in writing must contain the following information and will be given to the employee:

(1) Regular Hours Worked and Hourly Rate of Pay.

(2) Overtime Hours Worked.

(3) Withholding Tax, Federal, State and City Tax, Vacation and Holiday Pay, and Travel Pay.

(4) All deductions will be Titled and Listed where applicable.

(c) Members not submitting claims for proper wages or overtime due within fifteen (15) days of each pay period, shall be deemed as having waived and vacated their rights to claim.

Section 26. M.E.S.C. AND WORKERS' COMPENSATION INSURANCE

(a) Before commencing any job, an Employer covered by this Agreement shall be required to furnish Local 324 its M.E.S.C. Registration Number. In addition, before commencing any job, the Employer shall furnish Local 324 with a certificate of Workers' Compensation Insurance submitted by the Employer's insurance carrier.

Section 27. WAGES AND FRINGE BENEFIT CONTRIBUTIONS

(a) By mutual agreement of the parties the wage schedules are now bound in the back of the Agreement book for convenience.

(b) **Maintenance and Inspection Time.** Engineers operating cranes, dozers, endloaders, backhoes, scrapers, graders and trenchers shall be paid for each shift the equivalent of one (1) hour's pay for steaming and greasing time, where a Fireman, Oiler or Apprentice is not required, or when Apprentice Engineer is attending school. Maintenance and Inspection Time must be actually worked.

Section 28. APPRENTICESHIP

(a) The parties agree that it is in their mutual interest and in the interest of the Building and Heavy Construction Industry that new employees be trained in the operation of the equipment covered by this Agreement. In furtherance of an Apprenticeship Training Program, the Employers agree that in addition to all other employees otherwise provided for in this Agreement, on all jobs where there are five (5) or more Engineers including the Craft Foreman employed on one (1) job by the Employer, the Employer must also employ one (1) Apprentice Engineer. Where there are twenty (20) or more Engineers, the Employer shall employ two (2) Apprentice Engineers. Where there are fifty (50) or more Engineers, the Employer shall employ three (3) Apprentice Engineers. The Apprentice Engineer shall be assigned to work with the various Engineers and to do other work as directed by the Craft Foreman. The starting rate for Apprentice Engineers shall be seventy percent (70%) of the Regular Engineer's base wage, plus the payment of all fringes

(except the Journeyman and Apprentice Training Fund contribution). Every six (6) months during the training period, the Apprentice Engineer's rate will be increased by five percent (5%) of the Regular Engineer's base wage plus applicable fringes, subject to the Apprentice Engineer's satisfactory compliance with the Apprenticeship Rules and receiving a passing grade on the validated competency tests, as certified by the Operating Engineers Local 324 Journeyman and Apprentice Training Committee (JATC).

(b) The parties agree to abide by the rules, regulations and procedures established by action of the JATC relating to the selection, employment, training, and discipline of apprentices.

(c) It is further agreed that in event of a scheduled leave, approved by the JATC, a replacement shall be assigned to the job by the JATC. In the case of illness or injury a replacement shall be assigned by the JATC after the fifth working day.

(d) The Apprentice(s) shall be assigned to work overtime when required by the manning ratios set forth above.

(e) The Employer agrees to pay the Apprentice one day's pay (eight hours straight time) every two (2) weeks when the Apprentice is attending class. The Employer is not obligated to make such payment until the Apprentice presents a class attendance record signed by the JATC instructor.

(f) The Employer further agrees to support and maintain a uniform statewide Operating Engineers Local 324 Journeyman and Apprentice Training Program under the authority of the Operating Engineers Local 324 Journeyman and Apprentice Training Committee.

(g) **Journeyman and Apprentice Training Fund Contributions.** The Employer agrees to pay into the Operating Engineers Local 324 Journeyman and Apprentice Training Fund, the amount **specified in Section 27** for each hour paid for all employees covered by this Agreement (except Apprentices) in accordance with the rules of the Operating Engineers Local 324 Journeyman and Apprentice Training Committee. These contributions will be made on the forms provided for and sent to such depository as shall be named by the Training Fund Trustees. The program will be for both Apprentices and Journeymen.

Section 29. INSURANCE

(a) In addition to all other compensation required by the terms of this Agreement, the Employer agrees to pay the amount specified in Section 27 to the Operating Engineers Local 324 Health Care Plan, for each employee covered by this Agreement for all hours paid each employee.

(b) All insurance contributions shall be computed on actual hours paid without regard to whether the employee was working on straight time or overtime. These contributions shall be deposited each month, or at such other regular intervals as may be determined by the Trustees of the Operating Engineers Local 324 Health Care Plan, to such depository as may be designated by said Trustees.

(c) The Agreement and Declaration of Trust establishing the Operating Engineers Local 324 Health Care Plan, dated September 28, 1970 and effective October 1, 1970, together with any Insurance and related Agreements and Amendments, are made a part of this Agreement by reference, and the Employer agrees to be bound by and comply with the provisions of said Trust Agreement, Amendments thereto, related Insurance Agreements and all rules, regulations, reporting forms and other requirements established by the Trustees of such Fund.

Section 30. PENSION

(a) In addition to all other compensation required by the terms of this Agreement, the Employer agrees to pay the amount specified in Section 27 to the Operating Engineers Local 324 Pension Fund, for each employee covered by this Agreement for all hours paid each employee.

(b) All pension contributions shall be computed on actual hours paid without regard to whether the employee was working on straight time or overtime. These contributions shall be deposited each month, or at such other regular intervals as may be determined by the Trustees of the Operating Engineers Local 324 Pension Fund, to such depository as may be designated by said Trustees.

(c) The Agreement and Declaration of Trust establishing the Operating Engineers Local 324 Pension Fund, effective May 1, 1968, and the Amendments thereto are made a part of this Agreement by reference, and the Employer agrees to be bound by and comply with said Trust Agreement, any Amendments thereto, and all related agreements, rules, regulations, reporting forms and other requirements lawfully established by the Trustees of such Fund.

Section 31. DEFINED CONTRIBUTION PLAN

(a) In addition to all other compensation required by the terms of this Agreement, the Employer agrees to pay the amount specified in Section 27 to the Operating Engineers Local 324 Defined Contribution Plan for each employee covered by this Agreement for all hours paid each employee.

(b) All Defined Contribution Plan contributions shall be computed on actual hours paid without regard to whether the employee was working on straight time or overtime. These contributions shall be deposited each month, or at such other regular intervals as may be determined by the Trustees of said Operating Engineers Local 324 Defined Contribution Plan, to such depository as may be designated by the Trustees.

Section 32. RETIREE BENEFIT FUND

(a) In addition to all other compensation required by the terms of this Agreement, the Employer agrees to pay the amount specified in Section 27 to the Operating Engineers Local 324 Retiree Benefit Fund for each employee covered by this Agreement for all hours paid each employee.

(b) These contributions shall be deposited each month, or at such other regular intervals as may be determined by the Trustees of said Operating Engineers Local 324 Retiree Benefit Fund, to such depository as may be designated by the Trustees.

(c) The Associated General Contractors of America, Greater Detroit Chapter, Inc. shall be entitled to designate a Trustee on the Retiree Benefit Fund. Payment of benefits from the Retiree Benefit Fund shall be contingent upon and subject to obtaining and retaining such approval of the Internal Revenue Service as may be necessary to establish the deductibility for Federal income tax purposes of any and all contributions made by the Employers under applicable provisions of the Internal Revenue Code of 1954, as amended.

Section 33. VACATION AND HOLIDAY FUND

(a) In addition to all other compensation required by the terms of this Agreement, the Employer agrees to pay the amount specified in Section 27 into the Operating Engineers Local No. 324 Vacation and Holiday Trust Fund, hereinafter referred to as "Vacation Fund" or "Fund," prior to any withholdings for each

employee covered by this Agreement. The amount of the contributions made in behalf of each employee to the Fund shall be added to the employee's gross wages before computing the withholding of any Federal or Local income taxes and F.I.C.A. contributions. This payment shall be forwarded each month to such depository as may be designated by the Trustees of said Fund, on forms furnished by the Trustees, and the Trustees shall instruct the depository to maintain an individual record for each employee for whom contributions are received which shall show the amount of money contributed with respect to each employee.

(b) The Fund shall be administered by a Board of Trustees made up of an equal number of Employer and Union Trustees, in accordance with all applicable laws.

(c) The accumulated vacation pay shall be distributed annually, in the month of December of each year, to the employees in accordance with the rules and regulations adopted by the Trustees of the Fund, which shall provide, among other things for the deduction by the Employer of the employee's share of Federal, State and Local taxes prior to payment to the Fund, to the end that the employee shall be entitled to an annual vacation benefit equal to the above-designated percentage of his total gross wages during the preceding fiscal year, with taxes prepaid.

Section 34. INDUSTRY ADVANCEMENT PROGRAM

(a) The Association has established an Industry Advancement Program whose activities shall be determined by the Association and which shall be financed by the payments hereinafter provided.

(b) The Employer agrees to pay to the Industry Advancement Program **ten cents (\$.10)** per hour for actual hours paid each employee working under this Agreement or, in the alternative, to pay **ten cents (\$.10)** per hour to the Operating Engineers Local 324 Health Care Plan for actual hours paid each employee working under this Agreement, said **ten cents (\$.10)** per hour to be in addition to the insurance Fund contribution provided for in Section 29. All Industry Advancement contributions shall be computed on actual hours paid without regard to whether the employee was working on straight time or overtime. These contributions will be reported on the forms provided and sent to such depository as shall be named by the Association.

Section 35. LABOR-MANAGEMENT EDUCATION COMMITTEE

(a) In addition to all other compensation required by the terms of this Agreement, the Employer agrees to pay the amount specified in Section 27 into the Operating Engineers Local 324 Labor-Management Education Committee, for each employee covered by this Agreement for all hours paid each employee.

(b) All Labor-Management Education Committee contributions shall be computed on actual hours paid without regard to whether the employee was working on straight time or overtime. Contributions shall be deposited each month, or at such other regular intervals as may be determined by the Trustees of the Operating Engineers Local 324 Labor-Management Education Committee, to such depository as may be designated by said Trustees.

(c) The Agreement and Declaration of Trust establishing the Operating Engineers Local 324 Labor-Management Education Committee effective June 1, 1989, is made a part of this Agreement by reference, and the Employer agrees to be bound by and comply with said Trust Agreement, any Amendments thereto, and all related agreements, rules, regulations, reporting forms and other requirements lawfully established by the Trustees of such Committee.

Section 36. GUARANTY OF AGREEMENT LIABILITY, SECURITY DEPOSIT FUND

(a) Every Employer agrees that it is prudent for the Union to require a reasonable security deposit to guarantee that the wages, fringe benefit contributions and other benefits made payable to and on behalf of employees covered by this Agreement will be paid. The parties agree that the sum of Five Thousand Dollars (\$5,000) is a reasonable security deposit, except as it is hereinafter provided that a larger sum is reasonable.

(b) Every Employer employing Operating Engineers working under the terms and provisions of this Agreement shall deposit Five Thousand Dollars (\$5,000) or an acceptable corporate surety bond as a security deposit with the Trustees of the Operating Engineers Local 324 Pension Fund to be held in a special account designated as Operating Engineers Security Deposit Account, hereinafter referred to as Security Deposit Account. It is the intention of the parties of this Agreement that the security deposit for each Employer shall never be less than Five Thousand Dollars (\$5,000) and that if any amount of money is drawn out of such security deposit then the Employer shall promptly replenish the deposit so that at no time will it be less than Five Thousand Dollars (\$5,000).

(c) The Security Deposit Account shall be administered by the Trustees of the Operating Engineers Local 324 Pension Fund under the terms of this Agreement and such other provisions as may be applicable.

(d) The cash security deposit shall earn interest at the regular bank rates per annum unless the security deposit is redeemed prior to one (1) calendar year from the date when such security deposit was posted.

(e) Every Employer party to this Agreement agrees that on request of the Trustees of the Operating Engineers Local 324 Pension Fund he will show any of his books or records to authorized representatives of said Trustees so that it can be determined whether or not the Employer is complying with the terms and provisions of this Agreement.

(f) The Union agrees that a Member of The Associated General Contractors of America, Greater Detroit Chapter, Inc. who has signed a power of attorney appointing the Association as its bargaining agent for Operating Engineers Local 324 will not be required to post a cash deposit or a corporate surety bond so long as the Member is not more than 30 days delinquent. If the Member becomes more than 30 days delinquent, the Member will be treated as a nonassociated Employer and shall be required to post a cash deposit or corporate surety bond to the Security Deposit Account in the total amount of the delinquency or \$2,500 per employee, whichever is greater. If the delinquent Member pays the indebtedness and is not delinquent for a period of six months, the deposit or bond will be returned to the Member.

(g) As of the date of the beginning of this Agreement, the Association shall advise the Union and the Trustees of the Operating Engineers Local 324 Pension Fund, in writing, of the names and addresses of all Employers who are members of the Association who have signed a power of attorney appointing the Association as its bargaining agent for Operating Engineers Local 324. If notice in writing is given to the Union and the Trustees of the Operating Engineers Local 324 Pension Fund that an Employer is no longer appointing the Association as its bargaining agent, such Employer shall then be treated as a nonassociated Employer.

(h) Each Employer member of The Associated General Contractors of America, Greater Detroit Chapter, Inc., by becoming a party to this Agreement

authorizes and empowers the Association to act in his or its behalf.

(i) A nonassociated Employer who becomes thirty-one (31) days or more delinquent in any of his obligations under this Collective Bargaining Agreement shall be required to increase his cash deposit or corporate surety bond to the Security Deposit Account to the total amount of the delinquency or \$2,500 per employee, whichever is greater.

(j) Whenever a Claim of Delinquency is presented to the Chairman and Secretary of the Operating Engineers Local 324 Pension Fund, these two officers shall promptly withdraw an amount of money equal to the claim of delinquency from the Security Deposit Account of the delinquent Employer and pay such money directly to the Fringe Benefit Funds to which the money is owed. A Claim of Delinquency must be certified by the Administrator of one of the Fringe Benefit Funds and must be based on an audit, an admission of liability, or a refusal by the Employer to allow an audit. For delinquency in wages, an authorized Representative of the Union may present a Claim of Delinquency. The obligations of the Employer to the various Fringe Benefit Funds shall be deemed to include any costs of collection charges assessed by the Funds for late payments.

(k) Notwithstanding anything herein contained to the contrary, it is agreed that in the event any Employer shall be delinquent at the end of any period in the payment of any of his obligations under this Agreement, after the authorized official of the Union shall have given seventy-two (72) hours notice to the Employer of such delinquency, the Trustees of the Fringe Benefit Funds or the union, depending upon the type of delinquent obligation of the Employer, shall have the right to take such action as they determine necessary until such delinquent payments are made; and it is further agreed that in the event such action is taken, the Employer shall be responsible to all affected employees for any further losses resulting therefrom.

(l) The Trustees of the respective Fringe Benefit Funds shall have the further right to take such legal action against any delinquent Employer as in their discretion may be advisable or necessary to make collection for any of the Fringe Benefit Funds entitled to monies from an Employer under this Agreement. At the direction of the Trustees of the Fringe Benefit Funds or the Administrator of same, any Employer covered by this Agreement may be ordered to produce a certified copy of his payroll records in order to show compliance with the terms and

provisions of this Agreement.

(m) **Enforcement:** If the employees of the bargaining unit whose wages and fringes are in delinquency are removed from the job by the Union to enforce payment of delinquent wages, Health and Welfare Fund, Pension Fund or Vacation Fund contributions, the aforementioned employees shall be paid by the delinquent Employer for all time lost at the straight time hourly rate.

Section 37. SAFETY

(a) All Employers and employees will abide by the State of Michigan Construction Safety Rules and Regulations effective as of the date of the signing of this contract.

(b) The Steward or Operator shall call the Foreman's attention to any unsafe equipment or unsafe working conditions. If the Foreman and the Steward cannot agree on what is unsafe equipment or unsafe working conditions, or if having agreed, action to correct same is not taken by the Foreman, the Steward must make a report to the Union. The Employer and the Union will then send Representatives or Representative to the job to observe conditions and agree on corrective measures to be taken.

(c) In the event of a serious injury accident to a member of the bargaining unit, appropriate reports shall be completed and a copy directed to the Safety Director of the local union.

(d) In the interest of safety: intoxication, possession, consumption or use of alcoholic beverages or illegal drugs is not permitted on jobsites or while driving a company vehicle.

(e) A copy of any accident report(s) required by the State of Michigan or federal government to be completed and filed by the Employer shall be made available by the Employer to the Union upon request by the Union.

(f) The Employer may require an employee who was involved in an accident to be tested for drugs and/or alcohol. In addition to post accident testing, employees may be tested for drugs and/or alcohol in those instances when testing is required by the owner employing the contractor, or by pertinent government regulation; provided, however, that any such testing shall be conducted in accordance with Appendix A of this Agreement.

Section 38. WORKING CONDITIONS

(a) **EMPLOYER'S DUTIES:** It shall be the Employer's responsibility to:

- (1) Provide safe working conditions in accordance with all applicable laws.
- (2) Furnish suitable shelter to protect employees from falling materials and elements of the weather, and also to furnish heat when needed.
- (3) Provide safety cabs on equipment used in all hazardous work.
- (4) Provide equipment to protect employees from health hazards caused by exhaust fumes and unusual dusty conditions.
- (5) Make sure all equipment used on the jobsite is in safe operating condition in accordance with the Michigan State Safety Laws. No employee shall be penalized for refusing to operate equipment not meeting the Michigan State Safety Laws.
- (6) Provide employees with a clean place to change clothing, eat lunch, and wash up, where practical.
- (7) Provide clean, cool, drinking water, on the jobsite.
- (8) Allow the employee time off for vacation when requested in writing; however, the employee must give the Employer a reasonable notice.
- (9) No employee covered hereby may be discharged for refusal to cross a legal primary picket line.
- (10) **Payment for Lost Time:** Any employee hospitalized or seriously enough injured to be required to leave the job shall, without regard to the question of fault, be paid for the full day on which the injury occurs based on an examining physician's statement.

(b) **EMPLOYEE'S DUTIES:** For information to the parties to this Agreement, the following duties of various employees are listed:

- (1) An Engineer shall not have the right to any job until he starts work.
- (2) An Engineer temporarily absent from his machine must not allow any person other than an Engineer or Apprentice Engineer to run, operate or in any way meddle with his machine or boiler.
- (3) An Engineer shall not operate any boiler or other appliance requiring inspection under the laws of the State of Michigan, cities or municipalities therein, until the same has been inspected. All boilers found to be faulty or without inspection shall be immediately reported to the Boiler Inspector's Office.

- (4) No Engineer shall teach any person except another Engineer or an Apprentice Engineer to run any machine or part thereof under the Engineer's jurisdiction, without special permission of the Business Manager.
- (5) No Engineer shall be allowed to quit or leave the job until he has given special notice and secured another Engineer to take his place unless he is ordered to leave by authority of the Union or the Employer. This is intended to protect the Employer against being left without an Engineer and shall not be construed in any way as restricting the right of an Employer to discharge his employees.
- (6) No Engineer shall be allowed to enter into any private agreement for hours or wages or working conditions with any Employer.
- (7) Any Engineer who fails to demand and receive wages in accordance with the scale set forth in this Agreement shall be in violation of his Union Constitution and Bylaws.
- (8) Any Engineer who deliberately fails to perform a fair day's work shall be in violation of his Union Constitution and Bylaws.
- (9) It is distinctly understood that no employee shall work for any Employer, whether an individual, partnership or corporation, who fails to provide Workers' Compensation Insurance for the employees.
- (10) Engineers employed on a job to run an engine shall not be assigned to perform other work not customarily performed by an Engineer. If a physical examination of the Engineer is required by the Employer the examining physician shall be mutually agreed upon by the Employer, the employee and the Union and the cost of the physical examination shall be paid for by the Employer.
- (11) Every Engineer is encouraged to carry a valid first aid card. The Union shall make every effort to provide these classes on a regular basis.

Section 39. LIABILITY

(a) The Employers agree that they will not hold the Union liable for any acts of its members not authorized by the Union. The Union agrees that it will, on written request of the Employer, notify the Employer within forty-eight (48) hours after receipt of said request at the office of the Union, whether the act of the member or members of the Union so complained of was or was not authorized, and if not authorized, the Union agrees that it will take immediate steps to rectify the situation.

(b) The Union agrees that it will not hold the Employer liable for any acts of the agents of the Employer not authorized by the Employer. The Employer agrees that he will, on written request of the Union, notify the Union within forty-eight (48) hours after receipt of said request at the office of the Employer, whether or not the act of the Employer's agent so complained of by the Union was authorized, and if not authorized, the Employer agrees that he will take immediate steps to rectify the situation.

(c) The Employer agrees to register with the Michigan Safety Commission and to cooperate fully with its provisions on safety.

Section 40. JOINT GRIEVANCE BOARD

(a) A grievance is an alleged breach, misinterpretation, or misapplication of the express terms of this Agreement. The grievance procedure is available to claims of either the Union or the Employer.

(b) Settlement of grievances may be arrived at in any step of the grievance procedure which will be final and binding on the Union, the Employer, and the employee(s) involved.

(c) A grievance must be presented (verbally or in writing) within three (3) working days of the time that the aggrieved party first becomes aware, or reasonably should have become aware, of the claim subject of the grievance. A 'working day' does not include Saturdays, Sundays or holidays.

(d) Grievances shall be handled in the following manner:

Step 1. Between the Employer's Supervisor and a representative of the Union on the jobsite.

Step 2. Within ten (10) working days following completion of Step 1, an unresolved grievance shall be reduced to writing. The written grievance shall be submitted to a Union Business Representative and the Employer's Supervisor at the jobsite.

Step 3. Within five (5) working days following completion of Step 2, an unresolved grievance shall be submitted to the Business Manager and the

Supervisor or Labor Relations Manager of the Employer.

Step 4. Within five (5) working days following completion of Step 3, an unresolved grievance shall be submitted to the Joint Grievance Board. The Joint Grievance Board shall consist of six (6) persons, three (3) of whom are to be selected by the Association and three (3) by the Union. The Association and the Union each shall appoint at least two (2) alternate representatives who may serve in place of a regular representative of such Association or Union, as the case may be. The time limits provided for in any Step of the grievance procedure may be extended by mutual consent of the Union and the Employer.

The Joint Grievance Board shall appoint a Secretary from among its members, and the Board shall meet promptly upon written notice from the Secretary or from any member of the Board after receipt of such notice of requested meeting. The Secretary will schedule Board meetings after ascertaining the Employer's availability.

The Board will not issue a decision in the absence of the Employer. The Board will consider and decide all grievance relative to wages and all other terms and conditions of employment under this Agreement. Grievances shall be submitted in writing and shall be decided by a majority vote of the full Board consisting of six (6) members. The decision of the Board is final and binding.

The refusal or failure by a party to schedule or attend a Joint Grievance Board meeting shall constitute waiver of all prior irregularities in the grievance procedure, and the complainant may proceed directly to arbitration. If the complainant prevails in the arbitration over such party, that party shall pay all costs of arbitration, excluding attorney fees. If the complainant does not prevail, each party will pay its own costs, except the arbitrator's fee shall be shared equally.

Step 5. If the Joint Grievance Board deadlocks regarding any grievance, it shall constitute a basis for submittal of the grievance to the National Center for Dispute Settlement. In such instances, the parties to the grievance shall appoint an arbitrator to review the dispute and render a decision. If the parties are unable to agree upon an arbitrator, the National Center for Dispute Settlement shall make the designation. The arbitrator's fee shall be shared equally by the Employer and the Union. The arbitrator shall confine his decision to the dispute in question and shall not have authority to add to, subtract from, or in any way modify the terms of this Agreement. The arbitrator's decision shall be final and binding on the Employer

and the Union, and the employee(s) involved.

(e) It is expressly agreed and understood that violation of payment of rates of pay, overtime work, Holiday and Vacation Fund, Security Deposit, Insurance and Pension Funds, Labor-Management Education Committee, Retiree Benefit Fund or Apprenticeship and Journeyman Retraining Fund contributions, as provided in this Agreement shall not be considered as subject to arbitration, provided the Union gives seventy-two (72) hours written or telegraphic notice to the Association and the Employer concerned prior to taking economic action for violation of payment as provided for in this Agreement.

Section 41. ILLEGALITY

In the event that any portion of this Agreement is declared or becomes inoperative under State or Federal Laws, the balance of the Agreement shall remain in full force and effect, and the parties hereto agree to meet and renegotiate the inoperative portion of the Agreement.

Section 42. EQUAL TREATMENT

(a) In the event the Union enters into any written agreement with an Employer or Employers, not signatory to this Agreement, engaged in construction work as done by members of the Association, in which the terms and conditions are more favorable than those contained herein, the Union agrees such more favorable terms and conditions shall become a part of this Agreement replacing those herein which are less favorable.

(b) It is mutually agreed and understood that terms and conditions as used in this Section shall be deemed to include but shall not be limited to: Wages, Vacation and Holiday Fund, Insurance and Pension Funds, Retiree Benefit Fund, Labor-Management Education Committee or Apprenticeship and Journeyman Retraining Fund contributions. The Union will not permit its members to work for any Employer who fails to pay an amount at least equal to the gross wage stated in Section 27 hereof.

(c) Maintenance work may be performed under the current provisions of the "General Presidents' Project Agreement for Maintenance by Contract," initially developed by the General Presidents' Committee in September 1956.

(d) **Subcontracting.** Each Employer expressly agrees that he will not enter

into a subcontract for work covered by this Agreement to be done at the site of the construction, repair, demolition or alteration of a building, structure or other work with any Employer who does not abide by the wages, fringe benefit contributions, terms and conditions of this Agreement, provided that Section 16 hereof shall govern where applicable. Furthermore, where there is any dispute over work jurisdiction, such dispute shall be governed by Sections 3 and 4 of this Agreement.

Section 43. TIMELY PAYMENT OF FRINGE BENEFIT CONTRIBUTIONS

(a) In addition to the hourly wage shown in these schedules, there are the funded fringe benefit contributions for Vacation and Holiday, Insurance, Pension, Defined Contribution Plan, Retiree Benefit Fund, Apprenticeship Training Program Fund, Labor-Management Education Committee and Industry Advancement Fund, that are payable by the 15th day of the succeeding month in the amount and manner provided herein. If these fringe benefit payments are not made as stated herein, it shall constitute a status of delinquency and a violation of this Agreement.

(b) The Employer agrees to furnish to the Trustees of the various fringe benefit funds provided for in this Agreement, upon request, such information and reports as the Trustees may require in the performance of their duties. The Employer further agrees that the Trustees, or any Agent authorized by the Trustees, shall have the right to enter upon the premises of the Employer to perform an audit and to have access to such of the Employer's records as may be necessary to permit the Trustees to determine whether the Employer is complying fully with the provisions of this Agreement regarding Employer contributions.

(c) The Employer understands and agrees that the Trustees of the fringe benefit funds provided for by this Agreement have the power, as provided in their respective Trust Agreement, to fix a schedule of cost of collection charges, in the nature of liquidated damages, to be assessed against any Employer who fails to make the contributions required hereunder in the correct amount and when due. The Employer agrees to pay the cost of collection charges assessed against him for failure to pay contributions when due.

(d) The liquidated damages are as follows:

- (1) Contributions are due on the 15th of the month following the month worked, with an additional fifteen (15) day grace period.

Daily interest is assessed from the due date at the rate of eighteen percent (18%) per annum on late contributions (those paid after the grace period). Liquidated damages are capped at twenty percent (20%) of the contributions owing.

- (2) If suit is filed to collect contributions which remain unpaid at the time the court enters judgment, liquidated damages shall be a flat twenty percent (20%) of the contributions unpaid.
- (3) Liquidated damages assessed and unpaid under prior Agreements shall be recomputed under the above formula and liability imposed for the lesser of the two assessments.

(e) If there are fringe benefit contributions or liquidated damages due and unpaid after a Fringe Benefit Fund has attempted to collect the unpaid contributions or liquidated damages, on demand by the Fringe Benefit Fund, the Employer agrees to submit to arbitration the issue of whether the fringe benefit contributions or liquidated damages are due and unpaid and what the amounts of the fringe benefit contributions or liquidated damages are. The Fringe Benefit Fund shall have this right to demand arbitration in addition to all its statutory and judicially established rights to bring suit against the Employer for the unpaid contributions or liquidated damages. The arbitrator shall have the power to award the Fringe Benefit Fund a sum of money which includes all amounts of unpaid contributions and liquidated damages owing on the date of the Arbitration Hearing, incurred under prior collective bargaining agreements, as well as the current collective bargaining agreements. The arbitration shall be held under the Arbitration Rules of the National Center for Dispute Settlement. The expenses of the arbitration, including the expenses of the arbitrator, shall be shared equally by the Fringe Benefit Fund which demands the arbitration and the Employer. The Award of the arbitrator shall be final and binding on both parties to the arbitration.

(f) Where fringe benefit contributions or liquidated damages are collected on behalf of the Fringe Benefit Funds in a lesser amount than is totally owed, the Joint Administrative and Delinquency Committee (JA&DC) is authorized to allocate the fringe benefit contributions or liquidated damages among the Funds, as deemed appropriate, in the sole discretion of the JA&DC, including allocating damages to pay for costs of collection.

Section 44. DELINQUENT CONTRACTORS

In order to assure timely fringe benefit contributions by all Employers required under this section, the Trust Fund Administrator shall provide on a monthly basis to the Association, a list of all Employers who are delinquent in making the required payments. This list will be made available to signatory contractors and to representatives of the Union in order to encourage compliance with the requirements of this Section.

Section 45. NO STRIKE — NO LOCKOUT

(a) Throughout the term of this Agreement, the Union agrees that neither it nor any of its officers, agents or representatives shall engage in, authorize or encourage any stoppage or suspension of work, slowdown, picketing, strike or concerted refusal to work. Excluded solely from the foregoing prohibition is a work stoppage authorized by Section 36(k) of this Agreement.

(b) Throughout the term of this Agreement, the Employer agrees that neither it nor any of its officers, agents or representatives shall engage in, authorize or cause any lockout or concerted work stoppage.

Section 46. LABOR MANAGEMENT FORUM

(a) **There is hereby established a Labor/Management Forum, which shall be comprised of an equal number representing the Union and the Association, for the purpose of reviewing on a quarterly basis (or as needed) basic problems, market share discussions, and/or issues confronting the industry and developing resolutions for same.**

(b) **In addition, the Labor Management Forum will meet at least 90 days prior to the effective date of the negotiated future increase to review the financial status of the respective fringe funds and make recommendations to the various fringe fund trustees on allocation and benefit plan revisions.**

Section 47. MARKET RECOVERY

It is recognized by the parties that in certain areas of the State of Michigan, the construction market organized by the building trades unions has encountered strong competition. Where the mutual interest of both the Employer and the Union are served by cooperating to compete more effectively, it is agreed that the Employer and the Union will meet to negotiate a market recovery rate or condition on a job-by-job basis or an area-by-area basis.

Section 48. RENEWAL OR CHANGE

(a) This Agreement shall remain in full force and effect until the first day of **June 2009**, and thereafter shall renew itself from year to year unless either party hereto shall notify the other party, in writing, at least ninety (90) days prior to any anniversary date of this Agreement of its desire to change the Agreement in any way or to terminate the Agreement. Such written notice shall be sent by Registered Mail to the other party. In the event of notice by either party to change and/or terminate, and no agreement on such changes and/or termination is reached prior to **June 1, 2009**, this Agreement shall be deemed to have terminated on **June 1, 2009**.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective proper officers, duly authorized, this first day of June 2006.

THE ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, GREATER DETROIT CHAPTER, INC

Samuel Veltri, Director of Labor Relations

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL No. 324,
324-A, 324-B and 324-C, AFL-CIO

John M. Hamilton, Business Manager

John Cobe, President

Leo L. Bodette, Recording-Corresponding Secretary

opeiu#42afl-cio/sd

APPENDIX A DRUG/ALCOHOL TESTING PROCEDURE

1. Testing will be performed by a laboratory located in and licensed by the State of Michigan as a medical and forensic laboratory and operating in compliance with the Scientific and Technical Guidelines for Federal Drug Testing Programs, 53 C.F.R. 119.79 (1988), as amended.

2. The test samples (urine specimen) will be obtained at an authorized collection center from the person being tested in accordance with the following procedures:

- A. Identification of the person being tested shall be verified by the laboratory at the time the samples are taken.
- B. A clean, previously unused collection and storage container of a type utilized by medical facilities shall be supplied for collection of the samples. The person being tested may reject any container or collection bottle he has reason to believe is contaminated.
- C. The samples shall be in two (2) containers and a serially numbered label shall be affixed and taped over with a clear tape, in the presence of the person being tested.
- D. The person being tested shall report, on a standard form, any medication he is currently using, either prescribed by a licensed medical practitioner or proprietary medicines obtained over-the-counter.
- E. The laboratory shall maintain a “chain of custody” control of the samples.
- F. Any communication regarding the samples shall be referred by the numerical identification number. The name of the person being tested shall not be used or divulged by laboratory personnel.

3. Laboratory testing shall be conducted as follows:

- A. The initial screen test shall be conducted by using the EMIT (Enzyme Multiplied Immunoassay Technique) analysis method. If the initial test result is “negative,” the Employer shall be notified immediately. Any remaining portion of the samples shall be disposed of and all labels, chain of custody records and other reports shall be destroyed.
- B. If the initial screening test is “positive,” a confirmation test using the GC/MS (Gas Chromatography/Mass Spectrometer) method shall be conducted. If the result is negative, the procedure in (A) above shall be followed.

4. If the GC/MS confirmation test is positive, the Employer shall be notified immediately of the test results, and the test results shall promptly be made available to the person being tested. The report shall indicate the type of test conducted, the substances tested for, and the result of the test and quantity of substances detected.

5. The remainder of the samples from the confirmed positive test shall be stored with a copy of all chain of custody documents. If the person being tested is unable to provide a urine specimen, he shall provide a blood sample.

6. Testing for alcohol shall be conducted with the foregoing safeguards, and shall be made in accordance with reliable testing procedures, including breathalyzer, urine or blood.

7. The person being tested has the right to challenge the accuracy of a positive GC/MS test result (or a positive alcohol test result) within five (5) calendar days after notification. In the event a challenge is made, the sample in the other sealed bottle shall be sent to another laboratory acceptable to both the Employer and the Union. The cost of sending and retesting the sample shall be borne by the person being tested. If the results from the GC/MS test contradict the results of the original GC/MS test, the person being tested shall be returned to work and made whole for any loss of wages and be reimbursed for the cost of the test.

8. The Employer shall designate a management staff person to be the Medical Records Officer. The MRO shall be the sole recipient of all reports submitted by the testing laboratory, and he shall initiate any action taken as a result

of this testing procedure. The MRO shall maintain, in separate files, records pertaining to the Employer's substance abuse program and shall not disseminate any information to any third party or any electronic data bank.

9. The right of the person being tested to personal privacy in order to avoid damage to his reputation from disclosure of test results or treatment shall be respected to the extent possible, consistent with the Employer's right to support any disciplinary action and the Union's right to process any grievance filed by the employee. In furtherance of the grievance procedure the person being tested may authorize the release of any document or record in the MRO's possession to a representative of

MEMORANDUM OF UNDERSTANDING OPTIONAL FOUR-DAY WORKWEEK

The Union agrees that the Employer may work a 4-10 workweek on a particular job as provided below only under the following circumstances:

- (a) Carpenters and Laborers which work in conjunction with the Engineers who are to work 4-10s, whether these Engineers are employed by the Employer or by a subcontractor of the Employer, will also work the 4-10 workweek under conditions which are substantially similar to those appearing below.

1. At the beginning of a job or at any time during its duration, and for a minimum of one (1) week, the Employer shall have the option of scheduling work on Monday through Thursday for ten hours each day at straight-time. Work in excess of ten (10) hours but less than twelve (12) hours per day (Monday through Thursday) shall be paid at time and one-half. Work in excess of twelve (12) hours per day (Monday through Thursday) shall be paid at double time. The 4-10 workweek may be used by an Employer on a job basis. The 4-10 hour workweek may be used only under the following circumstances:

- (a) When the Employer elects to use the 4-10 workweek under this Section, he will notify the Local Union involved and inform the Local Union of the work schedule as soon as possible prior to its implementation.
- (b) In the event one (1) or more hours of work are unable to be performed because of bad weather or because of a holiday when 4-10s are worked Monday through Thursday, the Employer may schedule work on Friday of that week for a minimum of eight (8) hours. Work in excess of forty (40) hours for the week (Monday through Friday) but not more than forth-eight (48) hours shall be paid at time and one-half. Work in excess of forty-eight (48) hours for the week (Monday through Friday) shall be paid at double time. Eight hours of work may be performed on Saturdays at time and one-half. Work on Saturdays in excess of eight (8) hours shall be paid at double time.

- (c) On any job scheduled to work on Friday, the Employer shall not bring employees to the job to avoid the payment of premium time.
- (d) For days when ten hours of work is scheduled, Section 18, "Reporting Time," shall apply with the modification that five (5) hours shall be substituted for four (4) hours, and ten (10) hours shall be substituted for eight (8) hours.
- (e) When work is performed under the 4-10 workweek schedule, payday shall be one of the workdays. Once payday has been established on a project under this Section, that day shall remain the payday whenever 4-10s are worked.

THE ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, GREATER DETROIT CHAPTER, INC.

Samuel Veltri, Director of Labor Relations

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Section 27. WAGES AND FRINGE BENEFIT CONTRIBUTIONS

Craft Foreman and Assistant Craft Foreman

The Craft Foreman wages shall be at least one dollar and twenty-five cents (\$1.25) per hour more than the highest paid Engineer working on the job for the same Employer. The Assistant Craft Foreman wages shall be at least one dollar (\$1.00) per hour more than the highest paid Engineer working on the job for the same Employer.

Please call for wage rates.

248-451-0324

APPRENTICE ENGINEER

EFFECTIVE THE FIRST FULL PAYROLL PERIOD COMMENCING ON OR AFTER JUNE 1, 2007

Apprentice wage rates effective June 2007 will be issued as a supplement to this Agreement.

EFFECTIVE THE FIRST FULL PAYROLL PERIOD COMMENCING ON OR AFTER JUNE 1, 2008

Apprentice wage rates effective June 2008 will be issued as a supplement to this Agreement.

2006 - 2009

Supplemental Industry
Advancement Program Agreement

between

The Associated
General Contractors
of America
Greater Detroit Chapter, Inc.

and

The International Union of
Operating Engineers
Local No. 324, 324-A, 324-B and 324-C
AFL-CIO

**SUPPLEMENTAL AGREEMENT
INDUSTRY ADVANCEMENT PROGRAM**

A. The Association shall establish an Industry Advancement Program whose activities shall be financed by the payments provided for in Section 34 of the Agreement. No Employer or Union has or shall have any right, title, interest or claim, legal or equitable, in or to any payments made or to be made for allocation to said Industry Advancement Program, nor shall any part of the fund or assets of said Industry Advancement Program or any part of any payments allocated to the Industry Advancement Program at any time be paid to any Employer or to any other Employer who is a party to an agreement with the Union requiring the same payments as provided for in Section 34, or to any employee, or to the Union except to finance such activities or benefits as are or shall be carried on in accordance with the provisions of this Supplemental Agreement, or except as part, and in the form of, the activities and the benefits thereunder which the Association, as administrator of said Industry Advancement Program, may undertake in accordance with the provisions of this Supplemental Agreement; and provided further nothing herein before contained shall be deemed in any way to limit or affect the right of the Union to compel any Employer or such other Employer by legal or equitable action or otherwise to fulfill his obligation to make payments to said Industry Advancement Program, or to collect in any bankruptcy, reorganization or similar proceeding any such payments due from and unpaid by any Employer or other Employer, and provided further, that nothing hereinbefore contained shall affect the Association's rights to subrogation. Upon termination of payments allocable to the Industry Advancement Program, by reason of the expiration of this Agreement or because of the absence, or any other reason, of a contractual obligation upon the Employer to make payments so allocable, the assets and fund of the Industry Advancement Program shall not be distributed among any Employers or other Employers, or among employees, or to the Union but shall be held by the Association, which shall continue to administer and expend said assets and fund for the purposes, and subject to all the conditions set forth herein.

The Association may use the monies allocated and paid into the fund of the Industry Advancement Program, and the income from the investment thereof, for the purpose of meeting all costs to the Association (including, but not limited to rent, salaries of staff and legal counsel fees, office expense, cost of equipment, printing, stationery and items in the nature thereof), for carrying out the following

industry-wide activities within the counties covered by this Agreement, for the benefit of the building and construction industry as a whole within said counties and particularly for the benefit of Employers making payments allocated to the Industry Advancement Program, except as an expenditure for any such activity is prohibited by Section B of this Supplement.

(1) **ACCIDENT PREVENTION.** For example, the costs for promoting a Safety Campaign to help prevent personnel accidents in the industry. The Association shall designate one of its staff to act on all matters pertaining to safety, whose duties shall be, among others, to distribute to Employers and employees literature advocating, explaining and promoting accident prevention; to meet with authorized representatives of the Union when necessary for discussion of matters of safety and accident prevention; to attend meetings and conferences dealing with safety and accident prevention; and to engage in similar activities for the promotion of safety and accident prevention.

(2) **EDUCATION.** For example, to create, operate and maintain programs for the benefit of the building and construction industry as a whole within the counties covered by this Agreement, such as schools for Estimators, Construction Superintendents, Foremen and other supervisory personnel.

(3) **RESEARCH INTO NEW METHODS AND MATERIALS.** For example, to investigate new methods and new materials for use in the building and construction industry and establish the necessary machinery to see to it that the assignment of work with or upon such methods or materials is made, subject to the applicable provisions of this Agreement, to the correct Trade in order to avoid jurisdictional disputes.

(4) **PUBLIC RELATIONS.** For example, to conduct a Public Relations Program for the benefit of the building and construction industry in the aforesaid counties, particularly to make an effort to obtain the work in industrial plants.

(5) **INDUSTRY RELATIONS** with architects, engineers, building owners, government officials, subcontractors, material and equipment suppliers, manufacturers, and insurance and bonding companies.

(6) **LABOR RELATIONS.** For example, to pay the compensation of the representatives of the Association participating in collective bargaining

negotiations and grievance meetings with representatives of the Union; to pay the compensation of the representative or representatives of the Association in the presentation of any dispute to an arbitrator, as well as Management's share of the expenses and compensation of the arbitrator; to pay the expenses and compensation of witnesses in any grievance or arbitration proceedings; and to defray the expenses of said representatives in connection with the foregoing services and the cost to the Association of informative literature and other publications and usual sources of information relevant to collective bargaining and the processing of grievances, as well as the cost of disseminating such information among the members of the Association and other Employers in the building and construction trades industry.

(7) MANAGEMENT PARTICIPATION IN UNION HEALTH CARE PLAN AND SIMILAR FUNDS. For example, to pay the compensation and the necessary expenses incurred in connection with their services as such, of the representatives of the Employers upon the Operating Engineers Health Care Plan, the Operating Engineers Pension Fund, the Operating Engineers Vacation and Holiday Fund, the Operating Engineers Retiree Benefit Fund, and upon any other body composed jointly of representatives of Employers and representatives of Employees.

(8) MARKET DEVELOPMENT. For example, to educate industrial owners and governmental awarding authorities and agencies to contract out construction maintenance and repair work.

(9) STANDARDIZATION OF CONTRACTS AND SPECIFICATIONS. For example, to see to it that the architect states in the specifications at the proper place and with sufficient particularity an adequate definition of the work to be performed thereby eliminating many needless jurisdictional disputes by improper assignment of work in the first instance.

(10) DISASTER RELIEF AND CIVILIAN DEFENSE.

B. No part of this fund allocated to the Industry Advancement Program shall be spent directly or indirectly for any of the following or similar purposes.

(1) Lobbying, publicity or other endeavors in the promotion of legislation, existing or proposed, opposed by either the AFL-CIO, the International Union of Operating Engineers, or in opposition to legislation, existing or proposed, which is sponsored or favored by the AFL-CIO, the International Union of Operating Engineers.

(2) Subsidies, indemnities or payments of any kind to contractors, during, for, or in connection with a period or periods of strike, lockout or work stoppage, or payments to any fund, insurance carrier, or other person or entity, as a premium for, or in consideration of payment by such fund, insurance carrier, or other person or entity, of such subsidies or indemnities or payments to contractors.

(3) Litigation of any kind before any court or administrative body against the Union, or any of the members of the Union, or the payments of any costs or expenses directly or indirectly involved in such litigation.

(4) Payment of dues to, or the making of any other contribution, directly or indirectly, to The Associated General Contractors of America, Greater Detroit Chapter, Inc., or to its successor or to any like organization.

(5) Publicity or public relations campaigns in support of Management's position respecting pending or prospective collective bargaining negotiations with the Union or in support of Management's point of view on any matter involving the industry which could, directly or indirectly, affect the availability of work or employment for, or the wages or conditions of employment of the members of the Union, when such point of view is opposed by the Union.

(6) Any activity injurious to the Union or any of its affiliated locals. In the event that any activities of a program commenced by the Association were not apparent at the time of their commencement to be injurious to the Union, but later a complaint is made by the Union to the Association that any such activity is injurious to the Union, then, whether such activity or activities shall be continued and whether said activity or activities shall be financed out of monies already paid into the Industry Advancement Program or to be paid into the Industry Advancement Program, shall if there is no agreement between the Association and the Union as to the complaint made, on the demand of either side, made no later than thirty (30) days after the date of the complaint, be submitted for arbitration to an arbitrator selected by lot from a list supplied by the American Arbitration Association. The arbitrator shall hold the hearing and render his award within five (5) days after his selection, which award shall be final and binding upon the parties hereto. In arriving at his award, the arbitrator shall be governed as follows:

(A) In the event that the Association's obligation is only to pay for the

activity of said program on a current basis as the activity progresses.

- (I) Then if the Association alters or discontinues the program pending the arbitration of the Union's complaint, the Association shall have no obligation to reimburse the funds of the Industry Advancement Program for any monies it has paid or may be obligated to pay for such of said activities as preceded the date of Union's complaint.
 - (ii) If pending such arbitration the Association does not discontinue or alter the program to meet the Union's complaint, then the question to be decided by the arbitrator, in addition to whether the program or some phase of it was injurious to the Union, shall be as follows.
 - (a) Was it within the control of the Association to discontinue or modify the program? If the answer is that it was not within the Association's control, then the Association shall not be obligated to reimburse the funds of the Industry Advancement Program for the monies spent during the period between the date of the complaint and the date of the arbitrator's award.
 - (b) If the award is that it was within the control of the Association, then the arbitrator shall be asked to decide an additional question, viz., would the discontinuance or alteration of the program have caused more harm to the Association than it would have caused to the Union. If the answer is in the affirmative, then, again, the Association shall be absolved of any liability to reimburse the funds of the Industry Advancement Program for payments made between the date of the Council's complaint and the date of the award. If the answer is in the negative, Association shall reimburse to the funds of the Industry Advancement Program such expenditures as were made and incurred between the date of the Union's complaint and the date of the award.
- (B) Where the financing of the activities of the program is by prepayment either at the inception of the program or at various points after its inception, or is provided for by a contract which would impose upon the Association an irreducible obligation for a fixed amount irrespective of continuance or discontinuance of the program, then if the Union complains that any of the activities of the program are injurious to the

Union and the Association does not discontinue or modify such activities to meet the Union's complaint, and if the arbitrator awards that any of the activities of the program are injurious to the Union, then the Association shall be obligated to reimburse the funds of the Industry Advancement Program for a portion of such prepayment or fixed amount as the quantity of service or time utilized in said program's activities after Union's complaint and until compliance with the arbitrator's award bears to the whole quantity of the service to be rendered or to the whole of the time to be utilized for the activities so prepaid or contracted for.

In any event, if the arbitrator's award is that any of the activities of the program were injurious, then, from the date of the award the Industry Advancement Program's funds may not be used to continue such activities of the program unless altered to obviate injury to the Union, although the program may be continued in its original form by the Association out of its own funds.

C. None of the provisions in Section B of this Supplement shall operate to prohibit any communication from the Association to its members at any time, nor to prohibit the expression by such of the Association's representatives as are paid with the monies of the Industry Advancement Program of any position of the Association or its members in collective bargaining or in the adjustment or arbitration of grievances or in negotiations of any matter affecting wages or conditions of employment of the members of the Union.

D. An Annual Audit listing the actual expenditures made during the preceding year out of the funds of the Industry Advancement Program will be made and certified by a Certified Public Accountant. This audit will be made available to the Union.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective proper officers, duly authorized, this first day of June 2006.

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA,
GREATER DETROIT CHAPTER, INC.

Samuel Veltri, Director of Labor Relations

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