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4/1/2002 - 3/31/2005

**2002-2005
COLLECTIVE BARGAINING
AGREEMENT**

between

**LOCAL 210
LABORERS INTERNATIONAL UNION
OF NORTH AMERICA**

and

**COUNCIL OF UTILITY
CONTRACTORS, INC.**

**COUNCIL OF
UTILITY CONTRACTORS, INC.**

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**LABORERS INTERNATIONAL UNION
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LOCAL 210**

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PREAMBLE

THIS AGREEMENT, made the 1st day of April, 2002, by and between the COUNCIL OF UTILITY CONTRACTORS, INC., (hereinafter called the "Council"), acting for and on behalf of those members who have designated the Council as their bargaining agent with respect to Local 210, (hereinafter called "Employer"), and Laborers Local 210 of the LABORERS INTERNATIONAL UNION OF NORTH AMERICA, affiliated with A.F.L.-C.I.O., (hereinafter the term "UNION" shall mean Laborers Local 210).

WITNESSETH

WHEREAS, the parties hereto desire to stabilize employment in the Utility, Tunnel, and Heavy and Highway Construction Industry, agree upon wage rates, hours and conditions of employment.

NOW THEREFORE, the undersigned Council and Union, in consideration of the mutual promises and covenants contained herein agree as follows:

Article I

LIABILITY

1. This Council is the negotiating agent for those members who have designated the Council as their bargaining agent with respect to Local 210, as set forth above. The Union named herein is the negotiating agent for employees who now and in the future perform work described in this agreement. For any breach of this Agreement the liability of the members of the Council and the Local Union shall be several and not joint and the liability of the Council shall only be that of negotiating agent without liability for the acts of its respective members.

2. The Council shall notify the Union in writing within seven (7) days after the time that a new member joins the Council and becomes a member of the Council.

Article II

DEFINITION

1. This Agreement is to cover all Utility, Tunnel, and Highway and Heavy Construction which for the purposes of this Agreement is defined as including, but not limited to, the construction of: highways, roads, streets, bridges, alleys, grade crossings, driveways, sidewalks, curbs, guard rails, fences, culverts, parkways, parking areas, runways, taxiways, ramps and aprons and related work for excavation for conduit bases and foundations for lighting and water lines and deicing systems; athletic fields; highway and railroad and similar structures; railroad and street railway projects; sewers; sewage treatment projects; sedimentation beds; water mains, grade separations, foundations incident to the work herein described, abutments, retaining walls, viaducts, track elevations, elevated highways, drainage and reclamation projects; reservoirs and water supply projects; pumping stations; power plants; tank farms; bulk plants; pure water projects; hydro-electric developments, water power developments, transmission lines, duct lines pipelines, docks, dams, dikes, levees, revetments, irrigation and flood control projects, channels, channel cutoffs, dredging projects, jetties, break waters, locks, piers, piledriving, industrial sites, school sites, building site work; chemical cleanup; landfills; chemical destruction plants and related work; hydro intakes; and all earth moving, including the installation, operation, maintenance and disassembly of construction equipment and plants used in connection with and servicing of the aforementioned

work. This Agreement shall also cover all work traditionally performed by laborers within the jurisdiction of this Agreement.

2. This Agreement also covers all Utility Construction which for purposes of this Agreement is defined as including, but not limited to:
 - (a) The preparation of trenches, footings, etc. for cross-country transmission by pipelines or electric transmission by pipelines or electric transmission or underground lines or cables.
 - (b) The loading, unloading, carrying distributing and handling of all rods, mesh and material for use in reinforcing concrete construction.
 - (c) Trenches, Manholes-Cutting of streets and ways for laying of pipes, cables or conduits for all purposes; digging of trenches, manholes, etc.; handling and conveying all materials; concreting, backfilling, grading and resurfacing and all other Labor connected therewith. Clearing and site preparation as described herein. Cutting or jackhammering of streets, roads, sidewalks or aprons by hand or the use of air or other tools. Use and maintenance of all non self propelled and self propelled walk behind concrete saws; except on Heavy and Highway work only, use and maintenance of non self propelled walk behind concrete saws; concrete wall cutting saws, concrete and black top coring equipment (except truck or machine mounted); tending, drilling and coring equipment when such work is required to be performed by the Employer; tending all augers and casings on drilling rigs when such work is required to be performed by the Employer. Digging of trenches, ditches and manholes and the leveling, grading and other preparation prior

to laying pipe or conduit for any purpose. Loading, unloading, sorting, stockpiling, wrapping, coating, treating, handling and distribution of water mains, gas mains and all pipe including placing, setting and removal of skids. Cribbing, driving of sheet piling, lagging and shoring of all ditches, trenches and manholes. Handling, mixing or pouring of concrete and handling and placing of other materials for saddles, beds, or foundations for the protection of pipes, wires, conduits, etc. Backfilling and compacting of all ditches, resurfacing of roads, streets, etc., and/or restoration of lawns and landscaping, welding, joining, underwater cable installation.

- (d) Sewers, Drains, Culverts and Multiplate - Unloading, sorting, stockpiling, coating, treating, handling, distribution and lowering or raising of all pipe or multiplate. All digging, driving of sheet piling, lagging, bracing, shoring, and cribbing; breaking of concrete backfilling, tamping, resurfacing and paving of all ditches in preparation for the laying of all pipe. Pipe laying, leveling and making of the joint of any pipe used for main or side sewers and storm sewers. All of the laying of clay, terra-cotta, ironstone, vitrified concrete or other pipe and the making of joints for main or side sewers and storm sewers and all the pipe for drainage. Unloading, handling, distribution, assembly in place, bolting and lining up of sectional metal or other pipe, including corrugated pipe. Laying of lateral sewer pipe from main sewer or side sewer to building or structure. Laying, leveling and making of the joint of all multicell conduit or multi-purpose pipe. Cutting of holes in walls, footings, piers or other obstructions for the passage of pipe or conduit for any purpose and the pouring of con-

crete to secure said holes. Digging under streets, roadways, aprons or other paved surfaces for the passage of pipe, by hand, earth auger or any other method and manual and hydraulic jacking of pipe under said surfaces. Installation of septic tanks, cesspools and drain fields. Oil, brine, chemical transmission lines and related work, fiber optics, communication lines.

- (e) **Drilling and Blasting** - All work of drilling, jack-hammering, and blasting. Operation of all rock and concrete drills, including handling, carrying, laying out of hoses, steel handling, installation of all temporary lines and handling and laying of all blasting mats. All work in connection with blasting, handling and storage of explosives carrying to point of blasting, loading holes, setting fuses, making primers and exploding charges. All securing of surface with wire mesh and any other material and setting of necessary bolts and rods to anchor same. All high scaling and other rock breaking and removal after blast. Handling and laying of nets and other safety devices and signaling, flagging, road guarding. Waterproofing.
 - (f) **Signal Men** - Signal men on all construction work defined herein, including traffic control signal men or flagmen at construction sites.
 - (g) **Use of Tools** - Operation of all hand, pneumatic, electric, motor combustion or air-driven tools or equipment necessary for the performance of work described herein.
 - (h) This Agreement shall also cover all work traditionally performed by laborers within the jurisdiction of this Agreement.
3. This Agreement also covers all removal, abatement, encapsulation or decontamination of asbestos, lead

and other toxic and hazardous waste or materials which shall include but not be limited to: the erection, building, moving, servicing and dismantling of all enclosures, scaffolding, barricades, decontamination facilities, negative air machines for asbestos removal, etc.; the operation and servicing of all tools and equipment normally used in the removal or abatement of such waste or materials, including, without limitation, negative air machines; the sorting, labeling, bagging, cartoning, crating, packaging and movement of such waste or materials for disposal; the clean up of work site and all other work and stand-by time incidental to the removal, abatement, encapsulation or decontamination of such waste or materials; and the performance of safety watch duties on job sites where work is performed under this Agreement.

4. Tunnel work is specifically covered by Article XXVI of this Agreement.

Article III

GEOGRAPHIC JURISDICTION

This Agreement covers all Heavy & Highway, Utility & Tunnel Construction work in the County of Erie.

Article IV

UNION JURISDICTION

This Agreement is to cover all watchmen, flagmen (all crafts), fire watchmen, traffic control men, laborers, foremen (grade, pipe concrete, forms, seeding, asphalt, clearing and grubbing, clean-up stone-laying) in the performance of: the laying of all types of pipe and conduit; the spreading and pouring and raking and tamping of all asphalt and concrete materials and the bull floating (strike off) of all con-

crete; the laying of all types of stone or manufactured curb, rip-rap paving blocks, concrete blocks (paving), slope paving, Belgium Block; assembling and placing of Gabion and all similar types of baskets; the handling, the loading and unloading and stringing of all materials; the handling, loading and stringing of all wood products; the sharpening of all air tool bits and drills and bull points; the operation and maintenance of Bo Mag type rollers on all materials except asphalt; the operation of all remote controlled rollers up to 3500 pounds (per manufacturers specifications); any and all types of heaters, up to 1 million BTU's per unit, including radiant heat (thawzall), to be tended and handled and fueled by laborers when in use; the laying, spreading and storing of all tarpaulins; the handling, the laying and placing of forms used for curbing, gutters, roads and sidewalks and the stripping of same; the placing, setting and maintenance of all flares, blinker lights and reflectors; the cutting and chipping of road joints; the handling, the loading and unloading and distributing and erection of chain-link fence; handling and erecting of wire fence; overhead signs; handling and placing of wire mesh on roads and bridges, guard rails; the sandblasting and applying of sealers and hardeners and epoxy on concrete and asphalt work; asphalt striping and other asphalt painting; the loading of and nozzle operations on sandblasting guniting operations; the signing of all materials (manufactured or otherwise which is handled or put in place by laborers, the handling, the loading and unloading and distribution and installation of all guard rails, highway signs and road markers; tending, handling, and fueling single diaphragm pumps, and pumps up to and including 2" pumps; laying out, moving, connecting, storing and handling all hoses for all pumps; the operating of all types of machines used to seal any type of joints; the operating and servicing of mortar mixers (including, but not limited to, maxi mixers and/or mega mixers) and conveyers used in laborers' and bricklayers work regardless of number; the operating and servicing of rock drilling machines; the blasting and dynamiting of all rock;

welding (excluding machinery, tools, structural steel); installation of manholes and catch basins; the placing, of all pre-cast and pre-stressed materials except when placed or installed by the manufacturer pursuant to its collective bargaining agreement; handling, unloading, loading, assembling and laying of all multiplate; the operating of all air, gas, electric, oil and other types of motor driving tools including all pusher type equipment. Use and maintenance of all non self propelled and self propelled walk behind concrete saws; except on Heavy and Highway work only, use and maintenance of non self propelled walk behind concrete saws; concrete wall cutting saws, concrete and black top coring equipment (except truck or machine mounted); tending, drilling and coring equipment when such work is required to be performed by the Employer; tending all augers and casings on drilling rigs when such work is required to be performed by the Employer; the handling and tending of generators up to 10 kilowatts; lasers and any other instruments when used for transferring and alignment of grade for primary lay out; landscape nurseries; sound barrier installation; demolition or dismantling for scrap purposes; hazardous waste work to include chemical cleanup, drum handlers, transformers, divers, infra-red destruction machines, plasma arc plants, warehouse storage loading and unloading, safety men, asbestos removal, video x-ray operation; the unloading, loading, handling, stringing, tending and the installing, erecting, placing, setting and laying of all brick, all block, all stone and all other masonry products; the paving of all stone and brick products; IBC barrier, except on structures; the operating and maintaining of all walk behind curb machines; hose on a vacuum truck, scissor lifts, and all aerial manlifts as a tool of the trade. The foregoing applies in the performance of all the aforementioned work and all other work coming under the jurisdiction of the LIUNA unless state, local or owner requirements dictate otherwise. This Agreement shall also cover work traditionally performed by laborers within the jurisdiction of this Agreement.

Article V

PRE-JOB CONFERENCE

1. There shall be a mandatory pre-job conference. The Employer agrees to meet with the Union for a pre-job conference prior to the commencement of any work on the subject project. This and the same shall apply to any and all subcontractors.
2. In the event that an Employer violates this Article, the Union may serve a five (5) day notice of its intention to strike on such Employer. If the Employer does not comply within (5) days, the Union may strike such Employer without such action being a violation of the no-strike clause of this contract.
3. Where a subcontractor has not had a pre-job conference, the five (5) day notice shall also be served on the prime contractor.

Article VI

UNION RIGHTS

1. It shall be a condition of employment that all employees of the Employer who perform work covered by this Agreement shall become or remain members in good standing of the Union or shall pay uniform initiation and agency fees on or after the eighth (8th) day following the date of execution of this Agreement, or after the eighth (8th) day following the beginning of covered employment. The Union agrees that all employees will be accepted to membership or to its roster of eligible laborers on the same terms and conditions generally applicable to other members or laborers on its roster of eligible laborers and, further, that the Employer will not be requested to discharge an employee for reasons other than such employee's failure to tender the periodic dues or fees uniformly required.

2. The Employer agrees to discharge, seven days after receiving written notice signed by the Secretary-Treasurer of the Union, any employee listed in the notice as having failed to tender initiation and agency fees uniformly required, provided that said written notice is also given to the employee and that the employee has not paid the required initiation and agency fees within seven (7) days after receipt of the written notice. The Union shall indemnify and hold the Employer harmless for any financial liability arising from the Employer's compliance with such notice.

3. (a) When an Employer requests Laborers from the Union, they shall be dispatched in accordance with Local 210's Hiring Hall rules. The Union shall maintain an out-of-work registration list ("out-of-work list") for all qualified applicants who are out of work, in the order in which such individuals register with the Local 210 Hiring Hall. An applicant shall be qualified, and thus eligible for employment, only if that applicant (1) has not been previously discharged for cause or rejected in writing by the Employer; and (2) has all current documentation, licenses or certificates required to be eligible to work or to perform the work that is the subject of the Employer's request to the Union. The Union agrees to keep the documentation, licenses or certificates on file and to provide copies to the Employer upon request, but does not warrant their validity or relieve the Employer its responsibility to verify the information provided.

- (b) The Union shall fill Employer referral requests and dispatch to the Employers qualified employee applicants in order of their registration on the out-of-work list.

- (c) Whenever the Union fills an Employer's request for employees, either by referral from the Union or by request by name from the Employer, the Union shall provide to the Employer written notification, to be sent to the Employer by facsimile, stating each employee's name and work classification, and the start time, date, and location of the job to which each employee has been dispatched.
 - (d) Each applicant referred to an Employer shall be given a written dispatch slip by the Union confirming his or her dispatch to the Employer, his or her work classification, and the specific request the dispatched applicant is filling. All employees performing work covered by this Agreement hired by the Employer shall be listed on the out-of-work list. The Union shall not knowingly refer or dispatch any employee then currently employed by any other Employer working under an Agreement with the Union.
 - (e) The Employer has the right to refer employees to the Union to be added to out-of-work list.
 - (f) The job referral system set forth in this Article will be operated in a non-discriminatory manner and in full compliance with Federal, state, and local laws and regulations which require equal employment opportunities and non-discrimination. All of the foregoing hiring procedures, including related practices affecting training, will be operated so as to facilitate the ability of the Employers to meet any and all equal employment opportunity/affirmative action obligations imposed by state or federal law.
4. It is agreed that on each job the Union Business Manager shall appoint a working Shop Steward. On projects with five (5) or fewer laborers, the Union

shall select a working Shop Steward from the employees on the project that are certified Shop Stewards. On jobs where there is no certified Shop Steward or more than five (5) laborers, the Steward shall be the second employee hired and the last worker laid-off on the project. The Laborers' Steward will be employed at all times that any laborers are employed by the General Contractor on the project and will be paid for all time lost due to not having been notified by the Employer or the Employer's agent to report to work. He or she will be allowed sufficient time to perform his or her duties and will not be discharged, laid off, or transferred for any reason without prior approval of the Business Manager. The Union shall have the right to remove or replace any Shop Steward at any time. The Shop Steward is a working steward and shall not use his or her position as Shop Steward to avoid performance of his or her duties as an employee.

5. The Steward shall be notified prior to any hiring or lay-off. In the event a subcontractor is performing work on a project during a regularly scheduled shift, and the General Contractor does not have any employees on the job, a Shop Steward shall be appointed by the Union for the subcontractor, in accordance with the provisions set forth in Section 4 above. This shall not apply to overtime work performed by a subcontractor when a general contractor is not present on a job site.
6. All Shop Stewards must be certified by the Union before they may serve in this capacity. The requirements for certification will be established and maintained by the Union, in writing, a copy of which certification shall be provided to the assistant managing director of the Council.
7. The working Shop Steward is not authorized to add to or subtract from the terms of the Agreement or

interpret the Agreement or take any other action which may cause the Agreement to be in violation of any federal/state laws or regulations.

8. Authorized representatives of the Union shall be allowed to visit jobs during working hours to communicate with the Employer and the employees but in no way shall such person or persons interfere with or hinder the progress of the work.
9. (a) Employees injured at work shall be paid for the time spent going to the doctor's office for treatment at the time of injury. If the doctor certifies in writing that the employee is unable to return to work that day, the injured employee shall be paid for the balance of that working day.
(b) The injured employee shall be allowed four (4) hours' time from work for additional visits to the doctor for injuries sustained while in the Employer's service without loss of pay. It is understood, however, that such visits during working hours shall be made only when no other arrangements can be made and an affidavit is received from the doctor stating the necessity for each visit.

Article VII

MANAGEMENT RIGHTS

1. The management of the job, and the direction of the working force, including but not limited to the right to hire, suspend or discharge for a just cause and the right to relieve employees from duty, because of lack of work or other reasons is vested exclusively in the Employer, subject to the other provisions of this Agreement.
2. No limitation shall be placed on the amount of work which an employee shall perform during the work

day, nor shall there be any restrictions against the use of machinery or labor-saving devices.

3. The Union recognizes the Council as the exclusive bargaining representative of all designating Employers with respect to Local 210. The Council will provide the Union with a list of those Employers that will be bound by this Agreement prior to the commencement of negotiations. No modification, variation, or waiver of any term or provision herein shall be valid unless agreed upon in writing by both the Council and the Union.

Article VIII

WORK CONDITIONS

1. The Employer shall furnish all necessary tools that the employees are to use. In the event an employee does not return a half face respirator issued by the Employer, the employee shall pay the Employer \$10.00. The Employer shall be responsible for providing cartridges as needed.
2. At the time of hire or such later date as may be appropriate, employees covered by this Agreement shall be furnished with slipover rubber boots, rain suits and hard hats which shall remain the property of the Employer and shall be returned at the termination of use or employment. In the event that an employee fails to return such equipment, he or she shall pay to the Employer \$20.00 for a pair of rubber boots, \$20.00 for a rain suit, and \$5.00 for a hard hat.
3. The Employer shall supply rubber gloves for the performance of work necessitating their use.
4. When job conditions permit, the Employer shall provide warm, suitable shelter of sufficient size where

all laborers may eat their lunch and hang their clothing. The Employer shall also assume responsibility in case of loss or fire. No tools, building equipment or combustible material shall be stored therein. Employees shall be required to execute a verified proof of loss form, to be supplied by the Employer, in case of fire.

5. The Employer shall provide and the laborers shall maintain clean and sanitary toilet and drinking facilities.
6. (a) The Union and the Employer expressly agree that a stable work force is required at all times in this seasonal industry and that the absence of individual employees has a serious impact on the Employer's project productivity and efficiency.

(b) Absences from scheduled work are to be discouraged and accordingly such absences are just cause for discharge of an employee or employees.

Article IX

HOURS OF WORK

1. The work week is defined as 12:01 a.m. on Monday through 12:00 p.m. on Sunday.
2. Normal work day shall consist of eight (8) hours with one-half (1/2) hour for lunch. The starting time shall not be changed from day to day. The first shift each work day must start no sooner than 6:00 a.m. nor later than 9:00 a.m., except as may be otherwise mutually agreed upon by the Employer and Union.
3. Two shifts may be worked in twenty-four (24) hours and shall be of equal duration and at the same rate. However, in a two shift operation, where the com-

bined number of hours worked by the two shifts is sixteen (16) or less, each shift shall be paid eight (8) hours pay at straight time. Notwithstanding the foregoing provisions, when a shift is shut down by reason of completion of the shift work to be performed or conditions beyond the Employer's control, the affected shift shall be paid on the basis of the show-up time provisions contained herein Article X. This clause is equally applicable to the three (3) shift provisions hereinafter contained in Section 4. Thus, it is understood that there is no guarantee that on a given day, one shift might not vary due to weather, equipment breakdown, or changes in operation schedules.

4. Three shifts may be worked in twenty-four (24) hours and shall be at the rate and duration as set forth below:

1st shift - 8 hours work	8 hours pay
2nd shift - 7 1/2 hours work	8 hours pay
3rd shift - 7 hours work	8 hours pay

Each shift shall have one-half (1/2) hour for lunch. When three (3) shifts are worked the second and third shift shall be considered for payroll purposes as having been worked in their entirety on the same day on which the first shift started. On second and third shift work, fringe benefits shall be contributed on an hours-paid basis for the first eight hours. On multiple shift work, the shift schedules shall be arranged by mutual consent.

5. Prior to the start of shift work, the Employer shall give forty-eight (48) hours notice to the Business Manager. When the shift work to be performed shall be less than ten (10) working days in duration, prior agreement of the Business Manager shall be required. In the event of an emergency or directive of the letting agency, prior agreement for shift work of less than ten (10) working days duration is not

required, but notice will be given to the Business Manager prior to the starting of such shift work.

6. One and one-half (1/2) times the wage rate shall be paid for all work performed in excess of eight (8) hours in one day or forty (40) hours in one work week and for all work performed on Saturday and Sunday. Double time will be paid for all work performed on the following holidays, but which are not paid holidays under this Agreement: Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day.
7. With respect to any project that is 100% Federally funded, awarded by a Federal agency, the payment of overtime after eight (8) hours will not apply. Overtime will only be required to be paid after forty (40) hours of work in one week. On all projects not one hundred percent (100%) federally funded, overtime pay is required after either eight (8) hours of work in one day or forty (40) hours of work in one week.
8. All eligible employees shall be allowed time off to vote on Election Day in accordance with applicable law.
9. The Union and Employer may, by mutual agreement, in writing, specify that the regular work week on a project is four (4) consecutive days of work often (10) hours duration, unless precluded by law. In the event of such agreement, overtime shall be paid only after forty (40) hours of work is performed in a week.
10. A single irregular work shift can start at any time from 5:00 p.m. to 1:00 a.m. All employees when working a single irregular work shift on night work shall be paid an additional \$1.00 per hour. The provisions of this section shall be effective for work bid on or after July 1, 2002. It is understood and agreed

that if the single work shift language is not included in the NYS Department of Labor prevailing wage rate schedules, the premium is waived.

Article X

SHOW-UP TIME

1. Any laborer who reports for work at the regularly appointed starting time, unless he has been notified on the previous day that his services will not be required, shall be entitled to show-up time of two (2) hours at straight time. The employees shall remain on the job for the two (2) hour period, unless otherwise directed by the Employer. Employees directed to stand-by beyond the two (2) hour period shall be paid show-up time plus such additional stand-by time.
2. Employees reporting for work at starting time shall, if put to work, receive four (4) hours pay.
3. Employees reporting for work at starting time shall, if they work in excess of four (4) hours, be paid for actual hours worked that day.

Article XI

PAY DAY AND MODE OF PAYMENT

1. Employees performing work under this Agreement shall be paid once a week on the job. No more than six (6) days pay shall be withheld. The day selected as the first pay day on any job shall be the designated pay day until the completion of the job. If the pay day falls on a holiday, payment shall be made on the work day preceding such holiday. On failure to pay on the regularly scheduled pay day, the Employer shall pay to the Union a penalty of \$40.00 per

employee for each week the employee is not paid as provided herein. The employee may pursue all other legal remedies to which he or she is entitled for the Employer's failure to pay on the regularly scheduled day. If an employee is not on the job site when pay is distributed on a regular pay day because of any reason for which the Employer is responsible, the employee is allowed one hour with pay to retrieve his or her pay from the Employer's office.

2. All wages shall be payable in lawful currency, enclosed in an envelope which shows the employee's name and Employer's name, regular hours worked, plus overtime hours worked, all lawful deductions, and the amount due or by a negotiable payroll check showing all of the above information drawn upon a commercial bank within the region payable upon demand at par. In the event that a salary check is not honored by the bank on which it is drawn for any reason, the Employer shall pay the affected employee \$100.00 and the Employer shall not be permitted to pay wages by check in the future unless it posts a bond to ensure the payment of wages.
3. If any employee is discharged or laid off, all accrued wages shall be due and payable on the next regularly scheduled pay day.

Article XII

LABORER FOREMAN

1. A Laborer Foreman (grade, pipe, etc.) shall be designated by and at the discretion of the Employer and shall be assigned to such duties and responsibilities as the Employer, the Dirt Superintendent or other supervisory personnel may determine in its or his sole discretion. The Employer or his representative

shall be the sole judge of whether such employees are qualified to perform the assigned work. The rate of the Foreman shall be \$1.00 above the (b) rate as set forth in Article XXII.

Article XIII

SUBCONTRACTING

1. If the Employer subcontracts job site work falling within the terms of this contract, provisions will be made in each subcontract for the compliance by said subcontractor with terms, conditions of employment, wages, S.U.B., welfare, pension, education and training fund contributions not less than those contained in this Agreement.
2. A subcontractor is defined as any person, firm, partnership, self-employed person or corporation who agrees, under contract, oral or written, with the general contractor or his subcontractor to perform on the job site any part or portion of the work covered by this Agreement.
3. An Employer, who is a party to and/or is bound by the terms of this Agreement, shall not subcontract work covered by this Agreement to a firm, person or group where such firm, person or group is not a party to or bound by this Agreement when the subcontracted work begins. This provision does not apply to private, commercial, and residential work, and rented equipment.
4. When the Employer sublets work, the contractor or subcontractor receiving the work shall be signatory to or bound by an Agreement with the Union. Notice of the subletting of work described in this Agreement on any project shall be given to the Union before any persons are employed on such project. Such notice

shall give the location of the project and the name and address of the Owner, Contractor and Subcontractor.

5. Any employer who contracts out or sublets any work covered by this Agreement shall assume the obligations of any subcontractor for prompt payment of employees' wages, dues check-offs, and fringe benefit contributions, including reasonable attorneys' fees incurred in enforcing the provisions hereof from such time as the contractor is notified by the Union of the deficiency.
6. The Employer agrees that it will not subcontract any work covered by this Agreement in order to circumvent the payment of wages and fringe benefits.
7. Subcontractors who are not members of the Council or who are not signatory to this Agreement as an independent employer shall be required to remit fringe benefit payments and dues checkoffs on a weekly basis.
8. Off-site gravel or material pits, the material from which is used for a particular project covered by this Agreement, shall be operated under the terms of this Agreement when the pit is owned, leased, operated by or under the control of the Prime Contractor or another corporation or company of which the majority ownership is held by the Prime Contractor or its majority owner or owners.

Article XIV

SAFETY

1. No employee shall be required or assigned to engage in any activity involving dangerous conditions of work or danger to person or property in violation of an applicable statute, court order, or governmental regulation relating to safety of person or equipment.

2. In the event that the Employer violates Section 1 above, a withdrawal by the Union of the services of the employee or employees engaged in the particular operation shall not be in violation of this agreement by the Union.
3. The Employer and the Union do hereby agree to work together to promote safety on the job for the benefit of all employees. Safety rules and regulations will be made known to all employees and the use of safety equipment will be continually promoted by both parties.
4. (a) The Union and the Employer agree that willful neglect and failure by an employee to obey company safety rules and regulations; or to obey safety rules, standards and regulations as prescribed pursuant to the Occupational Safety and Health Act or other governmental regulation or legislation; or to use properly such safety devices or equipment as are provided by the Employer shall be just cause for discharge and it shall be the decision of the Union as to whether recourse will be had to grievance procedure of this Agreement.

(b) The Union agrees to cooperate with the Employer in encouraging employees to observe the safety regulations prescribed by the Employer and to wear properly and utilize safety equipment as required by the Employer and to work in a safe manner.

(c) The Union further agrees that Union representatives visiting job sites shall obey all company safety rules and regulations and shall obey all safety rules, standards and regulations prescribed pursuant to the Occupational Safety and Health act or other governmental regulation or legislation, and shall wear and use properly all

safety devices or equipment employees on the job site are required to wear and use.

5. A Joint Safety Committee shall be created of three (3) representatives from the Union and the Employer regarding work conditions on construction sites. This committee will only have advisory power and does not have authority to add to, subtract from, or modify the terms of the Agreement.
6. No provision of this Agreement shall supercede any municipal, state or federal law which imposes more stringent requirements as to safety, sanitary or general work conditions than are imposed by this Agreement.

Article XV

PENSION, WELFARE, SUB, EDUCATION & TRAINING FUNDS

1. (a) The Employer shall pay monthly to the Trustees of the Laborers' Local 210 Welfare Fund the hourly rate specified in Article XXII for all hours worked by employees covered by this Agreement, for the purpose of providing benefits for death, accident, health, medical and surgical care, hospitalization and such other forms of group benefits for employees covered by this Agreement, their spouses, and their eligible children, as the Trustees in their sole and absolute discretion, determine. It is the intention of the parties that no such contributions shall be required on the premium portion of wages, i.e. contributions shall be based upon hours worked and not upon wages paid. On second and third shift work, fringe benefits shall be contributed on an hours-paid basis for the first eight hours.

- (b) Welfare coverage shall also be provided for all eligible employees of the Unions and Fringe Benefit Funds provided contributions are made to the Funds by their employers on their behalf.
2. (a) The Employer shall pay monthly to the Trustees of the Laborers' Local 210 Pension Fund the hourly rate specified in Article XXII for all hours worked by employees covered by this Agreement. Contributions to the Pension Funds shall be utilized for the purpose of providing pension and other benefits for the eligible employees covered by this Agreement as the Trustees may, in their sole and absolute discretion, determine. It is the intention of the parties that no contributions shall be required on the premium portion of wages. On second and third shift work, fringe benefits shall be contributed on an hours-paid basis for the first eight hours.
- (b) Pension coverage shall also be provided for all eligible employees of the Unions and the Fringe Benefit Funds provided contributions are made to the Funds by their employers on their behalf in amounts no less than are paid by Employers covered by this Agreement.
3. The Employer shall pay monthly to the Trustees of the Laborers' Local 210 Education & Training Fund the hourly rate specified in Article XXII for all hours worked by employees covered by the Agreement for the purpose of providing education and training in the various trades covered by the Agreement. It is the intention of the parties that no such contributions shall be required on the premium portion of wages. On second and third shift work, fringe benefits shall be contributed on an hours-paid basis for the first eight hours.

4. The Employer shall pay monthly to the Trustees of the Laborers' Local 210 Supplemental Unemployment Benefit Fund the hourly rate specified in Article XXII for all hours worked by employees covered by this Agreement. Contributions to the Supplemental Unemployment Funds shall be utilized for the purpose of providing benefits to eligible employees in the event of unemployment. It is the intention of the parties that no such contributions shall be required on the premium portion of wages. On second and third shift work, fringe benefits shall be contributed on an hours-paid basis for the first eight hours.
5. The Employer shall pay monthly to the Trustees of the Laborers' Local 210 Annuity Fund the hourly rate specified in Article XXII for all hours worked by employees covered by this Agreement. Contributions to the Annuity Fund shall be utilized for the purpose of providing annuity benefits to eligible employees. It is the intention of the parties that no such contributions shall be required on the premium portion of wages. On second and third shift work, fringe benefits shall be contributed on an hours-paid basis for the first eight hours.
6. The Employer agrees to contribute the amount per hour set forth in this Article for each actual hour worked and the Employer agrees to contribute the amount per hour set forth in this Agreement for each hour paid pursuant to Article X, Section 1 of this Agreement. On second and third shift work, fringe benefits shall be contributed on an hours-paid basis for the first eight hours.
7. The Union, in its sole and absolute discretion, reserves the right to allocate and/or reallocate any portion of the increases provided in this Agreement to any of the fringe benefit funds, as well as the right

to reallocate any of the amounts currently allocated to wages or to the fringe benefit funds as set forth in this Agreement upon thirty (30) days notice to the Employer.

8. (a) If the employer is delinquent in the payment of fringe benefit contributions to the Funds, the Employer shall pay, in addition to the delinquent fringe benefit contributions, interest on the unpaid amounts from the day due until the date of payment at the rate of 10% per annum. If the funds bring an action to recover the interest on delinquent fringe benefit contributions, the Employer is obligated to pay the reasonable costs and attorneys' fees incurred in bringing said action.
 - (b) In the event that formal proceedings are instituted before a Court of competent jurisdiction to collect delinquent contributions and a Court renders a judgment in favor of the Funds, the Employer shall pay to the Funds (i) the unpaid contributions; (ii) interest on unpaid contributions at the rate of 10% per annum; (iii) interest on the unpaid contributions as and for liquidated damages; (iv) reasonable attorneys' fees; and (v) such other legal or equitable relief as the Court deems appropriate.
 - (c) The Employer agrees that in the event payment to the Union or the Funds by check results in the check being returned without payment, the Employer shall pay \$250.00 to the Union or the Funds. The Union or the Funds do not waive any right to any other liquidated damages to which they may be entitled.
9. (a) Notwithstanding the "No Strike" provision set forth in Article XVII of this Agreement, the Union may withdraw Laborers from any job to

enforce payment of wages or of contributions to the Fringe Benefit Funds, to enforce the requirement that Union dues be deducted from the wages of Laborers, or to enforce payment to the Union of Union dues already deducted from the wages of Laborers. The Union must provide 72 hours notice of its intention to remove Laborers from a job to the Employer by registered or certified mail.

- (b) Each employer shall furnish the Trustees of the respective funds with periodic reports as required by the Fund showing the names, social security numbers, hours worked and job location for each employee performing work covered by this Agreement.
 - (c) Subcontractors covered by Article XIII, Section 4 shall remit contributions on a monthly basis.
 - (d) In the event that no workers are employed during a report period, a negative report and/or a final report shall be filed.
 - (e) Monthly reports are due the 15th day of the month following the month on which contributions are being made.
- 10.(a) The Employer shall make available at reasonable times, for inspection and audit by the Funds' accountant, the following books & records: payrolls, W-2 forms, time sheets, canceled payroll checks, 1099 forms, payroll tax deductions, and evidence of unemployment insurance contributions. The Employer shall also make available those parts of the general ledger or cash disbursement ledger that pertain to payroll and bargaining unit employees. The employer shall retain the above books and records for a minimum period of six (6) years. Under no circumstances shall the

Employer be obligated to make available for inspection any information related to officer's compensation, to the extent not provided herein.

The audit shall be limited to verifying payments made to and/or due the Funds. In the event that confidential information, unrelated to the purpose of the audit is revealed during the inspection and audit, such information shall not be disclosed by the Funds' accountant to the Funds or anyone else except as may be required by law. The Employer may require the CPA to sign a confidentiality agreement before the commencement of the inspection and audit in a form acceptable to the Funds' accountant. The Funds shall bear the cost of the inspection and audit, except where the audit discloses a delinquency in excess of 15% of the prior year's contribution, or \$2000, whichever is greater.

- (b) In the event the Employer fails to produce the books and records necessary for an audit, the Employer agrees to pay a penalty of \$150.00 per day for each day. Nothing herein shall mean that the Funds relinquish their right to commence legal proceedings to compel an examination of the Employer's books and records for audit. In the event the Funds bring an action to obtain an audit of the Employer's books and records, the Employer shall be obligated to pay the reasonable costs and attorneys' fees incurred in bringing said action.

11. The parties to this Agreement recognize that the skills of the laborer constitute an apprenticeable trade. Whereas the NYS Department of Labor has approved apprentice standards for laborers, it is understood and agreed that the parties to this Agreement will implement, by mutual agreement, an approved Laborers Apprentice Training program.

Article XVI

STATUS QUO IN CERTAIN EQUIPMENT

1. The parties hereto recognize that the operation of certain equipment and work assignments may raise questions regarding jurisdiction of work in areas of the local unions party to this Agreement. The equipment involved is:
 - (a) Hydraulic Seeder
 - (b) Stump Remover
 - (c) Hydraulic motorized pin puller
 - (d) Bo Mag walk-behind type roller on asphalt
2. Pending final determination of the jurisdiction of the above equipment, such equipment and the operation thereof shall remain "status quo."

Article XVII

STRIKES AND LOCKOUTS

There shall be no strikes, walkouts, picketing, work stoppages, slowdowns, boycotts or other disruptive activity of a similar nature at a job site of, or otherwise directed at any Employer during the term of this Agreement, and there shall be no lockouts by an Employer. Further, the Union will not aid, support or permit unauthorized strikes, slowdowns or work stoppages by its members.

Article XVIII

ARBITRATION

1. Except as otherwise provided in this Agreement and except:
 - (a) claims, disputes, and demands arising out of the Employer's wage, fringe benefit contribution, and audit obligations-; and

(b) disputes arising out of jurisdictional disputes, all complaints, disputes or grievances arising between the parties hereto involving questions of interpretation or application of any clause of this Agreement, or any acts, conduct, or relations between the parties or their respective members or employees, directly or indirectly, shall be resolved in accordance with the procedure set forth in the balance of this Article.

- Step 1. All grievances must be made known in writing to the other party within seven (7) calendar days after the reason for such grievance has occurred. The aggrieved employee's or employees' Shop Steward, or another authorized representative of the Union, shall first submit a written grievance to the Job Superintendent or his or her duly authorized representative. The Shop Steward, or another authorized representative of the Union, shall be present at any meeting between the Job Superintendent and the aggrieved employee or employees. The Job Superintendent, or his or her duly authorized representative, must make a written disposition of the matter within three (3) calendar days after the submission of such written grievance thereto.
- Step. 2 If the disposition of the matter by the Job Superintendent, or his or her duly authorized representative, is not satisfactory, the matter must be taken up by the Business Agent and a representative of the Employer with authority to act within three (3) days of the written disposition set forth in Step 1.
- Step 3. If the disposition of the matter in Step 2 is not satisfactory, the Business Manager shall

attempt to resolve the matter with the Assistant Managing Director of the Council within three (3) days after Step 2.

2. Arbitration: If Step 3 is not successful, the grievant shall request a list of seven (7) arbitrators from the labor panel of the American Arbitration for final and binding decision. Such requests shall be no later than six (6) days after Step 3. Both parties agree to submit to such arbitration and be bound by and follow the decision rendered. Failure to do so on the part of the grievant shall deem the grievance closed. The arbitrator shall be selected by alternately eliminating names from the seven (7) person list until one remains. The grievant or his or her representative shall strike the first name.

The arbitrator shall not have jurisdiction or authority to add to, modify, detract from, or alter in any way the provisions of this Agreement or any amendment or supplement thereto. If the arbitrator should determine that the grievance is not covered by this Agreement, he shall return the grievance to the parties without decision and the grievance shall be closed.

Jurisdictional disputes shall not be subject to the grievance and arbitration provisions of this Agreement.

3. The costs of arbitration which shall include the fees and expenses of the arbitrator shall be borne by the Company in case its principal contention is rejected by the arbitrator, and the Union in case its principal contention is rejected by the arbitrator, except that each party shall pay all of the fees of its own representatives and witnesses. Any dispute as to whose principal contention is rejected shall be determined by the arbitrator. In the case that both parties' princi-

pal contention is upheld in part, the arbitrator shall designate what part of the costs are to be borne by which party according to the relative merits of each party's position.

4. The parties agree to cooperate with each other to develop a multi-party mechanism for the voluntary adjustment of jurisdictional disputes applicable only where all parties to the dispute have adopted such mechanism, subject to the approval of the Laborers International Union of North America.

Article XIX

DEDUCTIONS

1. The Employer shall deduct from the basic wage rate of employees covered by this Agreement, the amounts hereinafter set forth in Article XXII, for each actual hour worked by such employees.
2. No deductions shall be made for any such employee unless the employee has deposited with the Employer his copy of an executed authorization form, which shall in no event be irrevocable for a period of more than one (1) year of the termination date of this Agreement, whichever shall be the less.
3. Executed copies of the authorization cards will be kept on file by the Union and the Employer.
4. The Employer assumes no obligations with respect to the obtaining of authorization cards, it being understood that this is a duty and obligation of the Union.
5. With respect to any such employee for whom authorization cards have been furnished, the gross basic wage rate appearing hereafter at Article XXII shall be paid on a straight and/or time and one-half basis as shall be applicable under this contract.

6. Deduction shall be made in the first full payroll period following the furnishing of authorization cards.
7. The Union shall indemnify and save the Employer harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken or not taken by the Company in reliance upon authorization cards furnished by the employees and/or Union.
8. The Employer agrees to deduct and transmit to the New York State Laborers' Political Action Committee ten cents (\$.10) for each hour worked from the wages of those Local 210 Buffalo employees and five cents (\$.05) for each hour worked from the wages of those Local 210 Dunkirk employees who have voluntarily authorized such contributions on the form provided for that purpose by the Union. These transmittals shall occur monthly, and shall be accompanied by a list of the names of those employees for whom such deductions have been made, and the amount deducted for each such employee. The Employer shall retain one (1%) percent of the gross proceeds from the check off as reimbursement for the Employer's cost in administering this check off. The union agrees to indemnify and hold harmless the Employer from any and all claims, actions and/or proceedings arising out of said New York State Laborer's Political Action Committee.

Article XX

EQUAL EMPLOYMENT OPPORTUNITY

The Employer and the Union agree that there will be no discrimination against any employee or applicant for employment, with respect to race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation,

affectional preference, veteran status or union membership in all employment decisions, including but not limited to recruitment, hiring, compensation, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, layoff and termination, and all other items and conditions of employment except as provided by law. The use of masculine or feminine gender in this Agreement shall be construed as including both genders.

Article XXI

SAVINGS CLAUSE

1. In the event that any Federal or State Court shall at any time decide that any clause or clauses of this Agreement is or are void or illegal, such decisions shall not invalidate the other portions of this Agreement, but such clause shall be stricken out and the remaining portion of this Agreement shall be considered binding between the parties hereto. Nothing contained in this Agreement shall be construed to deprive any one or more individual laborer from pursuing whatever civil or criminal remedies they may have under the law for the collection of their wages, or any part thereof.
2. Any provisions of this Agreement which provide for Union security or employment in a manner and to an extent prohibited by any law or the determination of any governmental Board or Agency shall be and hereby are of no force or effect during the term of any such prohibition. It is understood and agreed, however, that if any of the provisions of this Agreement which are hereby declared to be of no force or effect because of restrictions imposed by laws are determined either by Act of Congress or other legislative enactment, or by a decision of the Court of highest recourse, to be legal or permissible, then any such provision of this Agreement shall

immediately become and remain effective during the remainder of the term of this Agreement. The Union reserves the right to renegotiate any of the provisions of this Agreement which may be of no force or effect.

Article XXII

WAGES

1. A Laborer shall be paid for the entire day at the rate applicable to the highest classification in which he has worked more than four (4) hours that day.

2. Highway/Heavy Contract Laborer:

(a) Job Classifications:

Group A: Basic, drill helper, flagman, outboard and hand boats, demolition worker, nurseryman, IBC barriers (except on structures), guard rails, road markers.

Group B: Bull float, grade checker, chain saw, concrete aggregate bin, concrete bootmen, gin buggy, hand or machine vibrator, jack hammer, mason tender, mortar mixer, pavement breaker, handlers of all steel mesh, small generators for laborers' tools, installation of bridge drainage pipe, pipe layers, vibrator type rollers, tamper, drill doctor, tail or screw operator on asphalt paver, water pump operators (2" and single diaphragm), nozzle (asphalt, gullite, seeding, and sand blasting), laborers on chain link fence erection, rock splitter and power unit, pusher type concrete saw and all other gas, elec-

tric, oil and air tool operators, wrecking laborer, and laser man.

Group C: All rock or drilling machine operators (except quarry master and similar type), acetylene torch operators, asphalt raker, powderman and welder.

Group D: Blasters, curb & flat work form setter (except on structures), stone or grallite curb setters and stone cutter.

(b) Wages per hour:

Group A:	\$22.31
Group B:	\$22.51
Group C:	\$22.71
Group D:	\$22.91

For all deleader & asbestos work, add \$1.00 to Group A rate.

For all hazardous waste work, add \$2.00 to Group A rate.

(c) Supplemental Benefits per hour:

Welfare:	\$5.96
Pension:	\$3.96
Annuity:	\$1.00
Training:	\$0.58
LECET:	\$0.10

(d) Effective July 1, 2003, \$1.25 gross increase for each classification.

Effective July 1, 2004 - June 30, 2005, \$1.30 gross increase for each classification.

(e) Deductions per hour:

Dues deduction: 6% of gross wages for each hour worked.

Political Action deduction: \$0.10 deducted from wages for each hour worked.

3. Sewer/Water Laborer:

(a) Job Classification:

Group A: Basic, flagman, top man, wreckers

Group B: Foundation, rod carriers, plaster tender, scaffold bootman, pneumatic, gas, electric, tool operator, jackhammer, chipping guns

Group C: Mortar mixer, over 8 feet in depth

Group D: Pavement formsetter, steelburner, caisson, wagon drill operator, pipe-layer, swing scaff

Group E: Utility pave driver, laser operator

Group F: Blaster

(b) Wages per hour:

Group A	\$22.31
Group B	\$22.41
Group C	\$22.46
Group D	\$22.56
Group E	\$22.91
Group F	\$23.31

(c) Supplemental Benefits per hour

Welfare:	\$5.96
Pension:	\$3.96
Annuity:	\$1.00
Training:	\$0.58
LECET:	\$0.10

(d) Effective July 1, 2003, \$1.25 gross increase for each classification.

Effective July 1, 2004 - June 30, 2005, \$1.30 gross increase for each classification.

(e) Deductions per hour:

Dues deduction: 6% of gross wages for each hour worked.

Political Action deduction: \$0.10 deducted from wages for each hour worked.

NOTE: The basic wage rate includes the amount to be deducted for each actual hour worked for DUES AND POLITICAL ACTION. Dues and Political Action Deductions per hour upon receipt of signed authorization cards from employees. The 6% dues deduction will be on gross wages exclusive of fringe benefits.

4. DRILLS - Individual wagon drills, trackmounted drills, jack-leg drills and multiple type drills shall require a drill helper except that the Union and the Employer recognize that in certain cases one helper may be able to service more than one drill. In such cases, the manning shall be pursuant to a project agreement between the Union and the Employer.
5. The wages rates for Foremen covered by this Agreement are as follows:
 - (a) LABOR FOREMEN - \$1.00 above (b) rate;
 - (b) Any Foremen covered by this Agreement may be employed on a weekly basis at a salary agreeable to the Employer and the Foremen.
6. WORK AT HAZARDOUS WASTE SITE. When an employee covered by this Agreement performs hazardous waste removal work on a State and/or Federally designated waste site, and where relevant State and/or Federal regulations require employees

to be furnished, and those employees use or wear required forms of personal protection, then in such case an employee shall receive the basic hourly rate plus \$2.00 per hour.

7. When an employee covered by this Agreement performs asbestos removal work or deleader work, such employee shall receive the basic hourly rate plus \$1.00 per hour.

Article XXIII

SUCCESSORS

1. This Agreement is for on-site Utility, Tunnel, and Heavy and Highway Construction as provided for in Article II and in Article IV, shall be binding upon those members of the Council of Utility Contractors, Inc. who have designated the Council as their bargaining agent with respect to Local 210 at the expiration of the previous Agreement, those members of the Council of Utility Contractors, Inc. who have designated the Council as their bargaining agent with respect to Local 210 during the course of negotiations, those members of the Council of Utility Contractors, Inc. who have designated the Council as their bargaining agent with respect to Local 210 on the effective date of this Agreement, and those contractors who become members of the Council of Utility Contractors, Inc. and who have designated the Council as their bargaining agent with respect to Local 210 during the life of this Agreement.
2. A corporate contractor party to this Agreement and/or the majority stockholders of such corporation shall promptly notify the Union in writing of any such other corporation as described herein which corporation is in existence at the time of the effective date of this Agreement or that may come into exis-

tence during the life of this Agreement, stating its full corporate name and address.

3. In the event that all or part of the Union's trade or geographic jurisdiction as defined by the terms of this Agreement is transferred to another local union affiliated with L.I.U.N.A., such local union shall be deemed a successor to Local 210 and this Agreement shall cover such other local union with regard to the work within the transferred jurisdiction.

Article XXIV

UTILITY INDUSTRY FUND

1. The Association has established a Utility Industry Fund for the purpose of meeting costs and expenses of the Association in connection with various activities and programs.
2. The Utility Industry Fund shall be supported completely by Employer contributions. Effective April 1, 1999, such Employer contributions shall be in the amount of \$. 10 per hour for each hour worked by all Employees covered by this Agreement. The Association may require that such contributions either be paid directly to the Association or to the Union, which will remit the contributions to the Association.
3. The Utility Association Industry Fund shall be administered by the Executive Board of the Association in accordance with the Association's By-Laws.

Article XXV

DRUG TESTING

1. The Employer may elect to implement a pre-employment, illegal drug screening program. The

Employer will notify the Union, in writing prior to implementing a pre-employment illegal drug testing policy, of the rules by which the program will operate. The Employer will operate the pre-employment, illegal drug screening program strictly in compliance with the rules it promulgates. Any changes in these rules will be provided to the Union thirty (30) days in advance of the effective date.

2. "Illegal drug" as used in this Article of the Agreement includes only the following five (5) drugs or drug classes: marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines. The Employer may only test for illegal drugs. If the Employer tests for anything other than illegal drugs as defined by this Article, the Employer will be liable for such action to the full extent of the law.
3. If an Employer establishes a pre-employment illegal drug testing policy pursuant to this Article of the Agreement, the Employer must provide each applicant with written information, prior to administering the illegal drug test, regarding the impact of drug use on job performance. Additionally, the Employer must provide the applicant with written notice, prior to administering the illegal drug test, of the manner in which the test is conducted, the reliability of the test performed, what the test can determine, and the consequences of testing positive for illegal drug use. The applicant shall acknowledge in writing that he or she received the required notice and information. Applicants who request a second test are liable for the cost of the second illegal drug or analysis or reanalysis test if requested unless the second test is negative, in which case the Employer shall reimburse the applicant for the cost of the test.
4. If an Employer establishes either a pre-employment or post-employment illegal drug testing policy pur-

- pursuant to this Article of the Agreement, the Employer shall make every reasonable effort to safeguard the privacy of each applicant or employee. All testing shall be performed by a laboratory that is licensed, inspected and in good standing with New York State. The laboratory shall confirm its suspected positive results with a scientifically accepted method, retain all positive samples for a minimum of ninety days, secure its sample against any reasonable possibility of tampering, participate in an outside proficiency testing program to monitor its quality performance, and be willing to defend its procedures with expert testimony.
5. To the extent that an Employer is required by Federal, State or Local laws, rules and/or regulations to subject its employees to illegal drug testing, the Union agrees to permit illegal drug testing of employees in compliance with the relevant law or regulation. Under no other circumstances shall any form of drug testing of employees be permitted. The Employer agrees that it will not subject any employee to illegal drug testing without first notifying the Union of the existence and terms of the Federal, State or Local laws, rules and/or regulations requiring such testing and providing the Union with a copy of the applicable provisions of said laws, rules and/or regulations.
6. If an Employer establishes a post-employment illegal drug testing policy pursuant to this Article of the Agreement, it is required that an employee be advised that s/he must undergo a drug screen, i.e., urine test, at least seven days before the testing is administered. Employees shall be provided with written notification concerning the impact of illegal drug use on job performance. In addition, the Employer shall inform the employees in writing of the manner in which the tests are conducted, the reli-

ability of the test performed, what the test can determine, and the consequences of testing positive for illegal drug use. This information shall be provided at least seven days prior to the illegal drug test. The employee shall give a written acknowledgment of the explanation.

7. Applicants or employees whose test result is positive for illegal drugs have the right to request, within 48 hours of the notification to the employee, reanalysis of the sample. If the applicant fails to request reanalysis or, if upon reanalysis the test result is still positive for illegal drugs, the applicant may be denied employment with the Employer. The decision of whether or not to hire an applicant based upon the results of pre-employment illegal drug testing shall be at the sole discretion of the Employer. If the employee fails to request reanalysis or, if upon reanalysis the test result is still positive for illegal drugs, the employee shall be denied employment with the Employer. However, applicants or employees whose test result is positive for illegal drugs and who are in a bona fide rehabilitation program will not be denied employment for that reason, so long as they are capable of performing their work satisfactorily.
8. Drug-related disputes that are not pre-employment pursuant to this Article of the Agreement shall be subject to the Grievance and Arbitration Procedure set forth in Article XVIII of the Agreement. Under no circumstances will the Employer or the Union be informed, beyond a negative or positive outcome, of any illegal drug testing result unless a grievance is filed, in which case all relevant information regarding the test results, testing methods and chain of custody will be provided to both the Union and the Employer.

9. The Employer shall bear all costs associated with post-employment illegal drug testing. The Employer shall reimburse the employee for all travel expenses. Employees will be paid for all time spent submitting to the test.
10. The Employer is not permitted to establish or implement any illegal drug testing policy other than that permitted by this Article of the Agreement.
11. Any section or subsection of this Article which provide for drug testing in a manner and to an extent prohibited by any law or the determination of any Governmental Board or Agency shall be and hereby is of no force or effect during the term of any such prohibition. It is understood and agreed, however, that if any section or subsection of this Article which is declared to be of no force or effect because of restrictions imposed by laws is determined by Act of Congress, other legislative enactment, or a decision of the Court of highest recourse to be legal or permissible, such section or subsection shall immediately become and remain effective during the remainder of the term of this Agreement.
12. In the event a dispute arises, legal action commences, or other damages both result any employer activity under this Article of the Agreement, the Employer shall hold harmless and indemnify the Union for any and all liabilities that may incur.

Article XXVI

TUNNEL WORK

This Article is limited to terms and conditions that apply solely to tunnel work as defined herein. All other terms and conditions in this Agreement apply to tunnel work as well.

1. Tunnel work shall be defined for this Article as including all jobs that are both in excess of 84" in

diameter and 700 feet in length. Should a shaft or cofferdam from the top of the rock line, under this Article be part of a larger general contract, only the shaft, cofferdam or tunnel below the top of the rock line part shall be done under this Article and the remainder under the appropriate contract or contracts.

2. This Article shall cover the construction, alteration, repair and demolition of tunnels, subways, shafts, raises, slopes and drifts including the lining of same. It shall also include placing of all pipes, conduits and rails in the tunnel.
3. Open cut or cut and cover work shall be done under the terms and conditions of Article II of this Agreement. This Article shall apply to any employee who performs work as defined in Sections 4, 5 and 6 below within the recognized jurisdiction of Laborers' International Union of North America Local Union No. 210. The Employer agrees to assign all such work as specified below only to employees covered by this Article.
4. (a) It is agreed that Laborers' work shall include and not be limited to, heading foremen, shaft foremen, rod foremen, electrician foremen, rigging foremen, iron foremen, caulking foremen, form foremen, concrete foremen, grout foremen, cement finishing foremen, cleanup foremen, track foremen, blasters, structural steel erection, reinforcing steel erection, welders, fence erectors, sheet buckers, riggers, precast erectors, elevator erectors, lancers, erection of catwalks and stairways, demolition workers, erecting of all guard rails, piledriving, crib work of all kinds, firemen, lagging and bracing regardless of method, handling, placing and driving of all sheetpile regardless of method. All bricklaying,

all stone, block, laying and tending of same, all cement finishing, rubbing and curing, the placing and handling of all tile, marble and terrazzo, all carpentry work, maintaining of all communication systems during construction, the handling, placing, and laying of all track, drill runners, all ironworkers, all maintenance workers, changehouse attendants, powder carriers, all safety men, all caulking, all chucktenders, nippers, brake men, derail men, cable men, hose men, gravel men, the handling, placing, erecting and dismantling of all forms regardless of method, bottom bell men, top bell men, all signal men, movers, concrete workers, shaftmen, mole nippers, power watchmen, all drilling regardless of method, the cutting, drilling, and installation of material used for timbering, and retimbering, assembly and installation of multi-plate, Linear plate, rings, mesh, mats, or forms for the shaft, including the setting of rods for the same, pouring, pumping, creting or guniting of concrete or any aggregate, hydraulic jacking placing and constructing of shields, maintain, operate and service air locks, air lines, grout machines, heading and bench drilling, heading and bench driving, hydraulic pressure on shield, hydraulic wrench, jackhammers, jumbos, pneumatic caissons, concrete and crete placers, public safety, accumulator for shield slushers, light boxes, collar bracing, lighting, wagon drills, wall plates, water handling repair rooms, traffic controlmen, the handling and laying of all type of pipe and conduit, all miners, miner helpers, the splitting and making of primers, all mucking and dumping, handling, installing and extending all water, air, and vent lines, handling of sponge pumps in wet headings, swampters, watchmen, communications and electrical installation,

access shafts, drop air shafts, transit stations located in tunnel areas.

- (b) All classification listed elsewhere in this Agreement which are not listed under this Article and Section shall be included in the coverage and description of work just as though incorporated in full in this Article and Section.
 - (c) The jurisdiction in subsections (a) and (b) of this provision shall commence at the top of the rock line for tunnels, shafts and cofferdams.
5. In compressed air all work underground or in compression chambers including tending of other air lock. All work in compressed air construction including but not limited to groutmen, trackmen, blasters, shield drivers, miners, brakemen, miners' helpers, lock tenders, mucking machine operators, motor men, gauge tenders, rodmen, compressed air electricians, setting of line plate and rind sets, drill runners, powdermen or blasters, air hoist operators, form men, concrete blower operators, cement operators, power knife operators, erector operators, steel setters, cage tenders, skimmers, track layers, dumpmen, diamond drillers, timbermen and retimbermen, cherry pickmen, nippers, chucktenders and cable tenders, vibratormen, jetgunmen, gunnite nozzle men, gunmen, reboundmen, and all other work connected therewith.
6. Employees who perform work of a complex and hazardous nature such as: welders, riggers, structural steel erectors, etc., and any employee sixty (60) years of age or older and who will perform work below street level, are required to submit to a physical examination by an employer selected doctor. The Employee will have the right to contest the findings of that doctor by examination by a doctor selected by

the Union. The cost of that doctor will be paid by the Employee.

7. The following job classifications and corresponding wage and fringe benefit contribution rates, shall apply to all work performed under this Article of the Agreement.

(a) Job Classifications:

Class A: Mole nipper, powder handler, change-house attendant and top laborer

Class B: Air spade, jackhammer, pavement breaker

Class C: Top bell

Class D: Bottom bell, side or roofbelt driller, maintenance men, burners, block layers, rodmen, caulkers, miners helper, trackmen, nippers, derailmen, electrical cablemen, hosemen, groutmen, gravelmen, form workers, movers and shaftmen, conveyor men.

Class E: Powder monkey

Class F: Blasters, ironmen and cement worker, miner, welder, heading driller

Class G: Steel erectors, piledriver, rigger

(b) Wages per hour:

Class A \$22.81

Class B \$22.96

Class C \$23.06

Class D \$23.56

Class E \$23.66

Class F \$24.06

Class G \$24.31

Additional \$2.00 per hour to basic rate for hazardous waster sites

Additional \$1.00 per hour to basic rate for deleader and asbestos worker

(c) Supplemental Benefits per hour:

Welfare	\$5.96
Pension	\$3.96
Annuity	\$1.00
Training	\$0.58
LECET	\$0.10

(d) Effective July 1, 2003, \$1.25 per hour gross increase for each classification.

Effective July 1, 2004 - June 30, 2005, \$1.30 per hour gross increase for each classification.

(e) Deductions per hour:

Dues Deduction: 6% of gross wages for each hour worked.

Political Action Deduction: \$0.10 deduction from wages for each hour worked.

*Dues and Political Action Deductions per hour upon receipt of signed authorization cards from employee. The 6% dues deduction will be on gross wages exclusive of fringe benefits.

Article XXVII

DURATION AND TERMINATION

It is agreed by both parties that all the conditions of this Agreement shall remain in full force and effect from April 1, 2002 to March 31, 2005 and during each calendar year thereafter, unless on or before the 31st day of January, 2005, or any year thereafter, unless on or before the 31st day of

January, written notice of change(s) to this Agreement is served by either party upon the other party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly subscribed by their duly authorized representatives the day and the year first above written.

COUNCIL OF UTILITY CONTRACTORS, INC.

By Hector Titus
Hector Titus, Executive Director

LABORERS LOCAL 210, LIUNA

By William Hoffman
William Hoffman, Business Manager