

K8496
3,200 workers

27 pp.

AGREEMENT

THIS AGREEMENT, made and entered into this ___ day of _____, 2002 between each of those Employers signatory hereto and The Heavy Constructors Association of the Greater Kansas City Area, acting as negotiating agent for and on behalf of those of its members who accept and sign this Agreement hereinafter referred to as "Employer," and The International Union of Operating Engineers, Hoisting and Portable Local Union No. 101, affiliated with the AFL-CIO, hereinafter referred to as "Union."

It is agreed and understood that the liabilities of the Employers signing this Agreement shall be several and not joint.

ARTICLE I

JURISDICTION OF AGREEMENT

The jurisdiction of this Agreement shall extend to and include Leavenworth, Wyandotte, Miami and Johnson Counties in Kansas, and Jackson, Clay, Platte, Ray, and Cass Counties in Missouri.

ARTICLE II

PURPOSE

1. The purpose of this Agreement is to establish the hours, wages, and other conditions of employment, and to adopt measures for the settlement of differences without interruption by boycotts, strikes, lockouts, or other causes.
2. It is mutually understood that the following terms and conditions relating to the employment of workmen covered by this Agreement have been decided upon by means of collective bargaining, and that the following provisions will be binding upon the parties to this Agreement during the term of this Agreement and any renewal thereof.
3. Local No. 101 of the I.U.O.E. will be the sole bargaining representative for all employees employed on work covered by this Agreement.

ARTICLE III

DEFINITION AND SCOPE

1. The word "work" when used in this Agreement means all construction, reconstruction, maintenance and utility construction performed in this area, with the exception of: Main line, cross country, oil, gas and gasoline pipelines and building construction. Building construction is hereby defined to include structures, including

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modifications thereof or additions or repairs thereto intended for use of shelter, protection, comfort or convenience, except as follows:

A. There are structures not primarily designed for habitability, which may be building or heavy construction at the election of the Employer. Examples of these structures are: raw water intake or outfall structures, pumping stations (sewage and storm).

B. All work outside the limits of the building structure itself, including mass excavation for the building, may be building or heavy construction at the election of the Employer.

2. This Agreement covers the Employer's permanent shops and manual labor on the job site but shall not include professional engineers, engineering or clerical employees, guards, watchmen, timekeepers, parts men, superintendents, assistant superintendents, general foremen, foremen, or any supervisors in charge of any class of labor. None of the employees exempted in this paragraph shall be required to be members of any Union.

3. This Agreement shall also include the production of materials on the job site specifically opened to provide materials for the project.

ARTICLE IV

STEWARDS

1. The Union may appoint a workman employed on the job to act as steward on each job. The Union will notify the Employer's superintendent of the appointment. The steward shall be subject to the same terms of employment as any other employee on the job and shall not be discriminated against by reason of the fact that he is serving as steward.

2. The steward shall be a working employee who shall, in addition to his regular work, be permitted to perform during working hours such of his duties as steward including the adjustment of grievances as cannot be performed at other times. The Union agrees that such duties shall be performed as expeditiously as possible.

3. In the event the steward is transferred or discharged, the Employer shall notify the Union immediately and never later than during the same working day or same shift.

4. No engineer shall bump another engineer off a piece of equipment. The steward shall work the overtime if his equipment is to be used or if extra equipment is on the job that is to be used and the steward is capable of operating it. The steward has

seniority only in the event of reduction of forces or if there is extra equipment on the project which the steward is capable of operating and the use of that equipment is required.

5. The steward shall not shut down any project for any reason.

ARTICLE V

HIRING PROCEDURE

Employment. In the interest of maintaining an efficient system in the industry providing for an orderly procedure of referral of applicants for employment, preserving the legitimate interests of the employees in their employment status within the area, and of eliminating discrimination in employment because of membership or non-membership in the Union, the parties agree to the following system of referral of applicants for employment.

1. Applicants for employment shall reregister for employment within sixty (60) days in order to maintain an up-to-date source of qualified applicants for employment. Applicants who do not reregister will be assumed to have found other employment or that they do not desire to be dispatched for other reasons. Applicants who reregister will not lose their place on the out-of-work list. Late applicants will be placed at the bottom of their appropriate group.

2. Except as provided in Article IX, paragraph 14, no employee or applicant for employment shall be required by the Employer to take a physical examination or complete any application for employment forms or to furnish a medical history.

Employees also shall not be required to sign equipment inspection certification reports or forms of any type or for any reason.

3. The Employer shall notify the Local Union of the location of the job of over \$500,000 and the approximate starting time. In addition, on said job, the Contractor shall provide a list of subcontractors.

4. The Union shall be the sole and exclusive source of referrals of applicants for employment, it being understood, however, that anything in this Agreement to the contrary notwithstanding, the Contractor may call for workmen by name, and the Union shall refer such workmen to the Contractor if they are available and if they are willing to accept the employment opportunity. In making referrals, priority may be given based upon length of service with the Employer, in the heavy construction industry or in the Greater Kansas City area.

5. The Employer shall give the Union at least twenty-four (24) hours' notice when requesting referrals. The Union shall refer qualified applicants for employment within forty-eight (48) hours from the time the Employer makes a request. If the Union shall fail

to provide required workmen within forty-eight (48) hours following the request of the Employer sufficient to fill the needs of the Employer, such Employer may recruit sufficient workmen to satisfy his request in whatever manner and from whatever source he may desire without regard to the provisions of this article.

6. The Employer shall have the right to accept or reject any applicant for employment.

7. The Union shall select and refer applicants for employment without discrimination against such applicants by reason of membership or non-membership in the Union, and such selections and referral shall not be affected in any way by rules, regulations, bylaws, constitutional provisions, or any other aspect or obligation of Union membership, policies or requirements. All such selections and referrals shall be in accordance with the following procedures.

8. The Union shall maintain a register of applicants for employment established on the basis of the groups listed below. Each applicant for employment shall be registered in the highest priority group for which he qualifies.

9. Nothing contained herein shall deny the Union the right to select any applicant for referral on the basis of experience in the industry, qualifications, skill, regardless of the employee's place on the out-of-work list except as provided for in Article V, paragraph 4. The referral office shall require all applicants who have not previously registered to submit a resume of experience and qualifications.

10. Applicants will be penalized by losing their position on the appropriate registration list for engaging in any of the following conduct: Failing or delaying without good cause to report to a contractor after dispatch from the hiring hall; quitting a contractor's employ without notice; willfully misrepresenting employment qualifications; violating a contractor's safety practices and regulations; willfully violating provisions of the instant labor agreement.

11. If an applicant, upon being referred in regular order, refuses to accept three referrals, his name may be placed at the bottom of the appropriate list under which he is entitled to be referred.

12. The Union accepts full responsibility for lawful administration of the hiring hall procedure herein set forth, including the non-discriminatory and lawful referral of employees to the Employers and the Union shall indemnify and save the Employers harmless from any claims, suits, judgments, and administrative hearings, rulings and decisions and from any other form of liability as a result of hiring employees under the provision of the hiring hall herein set forth.

13. The Employer will, when requesting referrals from the Local Union, (a) specify the number of employees required; (b) the location of the project; (c) the nature and type of construction involved; (d) the work to be performed; and (e) such other information as is deemed necessary by the Employer in order to enable the Union to make proper referral of applicants.

14. Applicants for employment shall be classed in the following groups:

Group A. Applicants for employment, in order of their registration, who have worked as operating engineers for a cumulative total period of two (2) years or more in the past five (5) years performing work in the area covered by this agreement.

Group B. Applicants for employment in order of their registration, who have worked as operating engineers for a period less than two (2) years within the past five (5) years performing work in the area covered by this agreement.

Group C. Applicants for employment in order of their registration, who have worked as operating engineers in excess of one (1) year performing work in the area covered by this agreement, except as provided in A and B above.

Group D. All other applicants for employment in order of their registration, who are available for employment as operating engineers.

15. Members of the Union employed in a supervisory capacity and desiring employment in the bargaining unit must register on the out-of-work list for employment under this Agreement.

16. Any Employer, employee or applicant for employment aggrieved by the operation of such registration facilities or referral office of the Union as applies to him shall have the right to submit this grievance under the grievance procedure in Article XV of this contract.

17. Nothing herein contained shall prevent the transfer of an employee from one job to another within the territory described in this Agreement.

18. It shall be a violation of this Agreement for an Employer to induce another Employer's workmen to quit and register on the unemployed list so said workmen may be eligible for recall under the provisions of this Article.

ARTICLE VI

PICKET CLAUSE

It will not be considered a violation of this Agreement for employees to refuse to cross a lawful and primary picket line recognized by the Union signing this contract, nor shall any employee be discriminated against for such refusal.

ARTICLE VII

UNION SECURITY

It is understood and agreed by and between the parties that as a condition of continued employment, all persons who are hereafter employed by the Employer in the unit which is the subject of this Agreement shall become members of the Union not later than the eighth day following the beginning of their employment or the execution date of this Agreement, whichever is the later; that the continued employment by the Employer in said unit of persons who are already members in good standing of the Union shall be conditioned upon those persons continuing their payment of the periodic dues of the Union; and that the continued employment of persons who were in the employ of the Employer prior to the date of this Agreement and who are not now members of the Union, shall be conditioned upon those persons becoming members of the Union, not later than the eighth day following the execution date of this Agreement. The failure of any person to become a member of the Union at such required times shall obligate the Employer, upon written notice from the Union to such effect and to the further effect that Union membership was available to such person on the same terms and conditions generally available to other members, to forthwith discharge such person. Further, the failure of any person to maintain his Union membership in good standing as required herein shall, upon written notice to the Employer by the Union to such effect, obligate the Employer to discharge such person. The foregoing shall apply only in states in which union security is lawful.

The Union agrees to indemnify the Employer and hold the Employer harmless from any final determination of liability to any employee by reason of the discharge of such employee, if such discharge was caused and effected by a request by the Union as provided for in the preceding paragraph of this Agreement. At a written request from the Union for an individual employee's date of starting of employment, the Employer agrees to give in writing to the Union the employee's starting date. The Union shall not be obligated to indemnify the Employer for any injuries or costs incurred which may be the result of erroneous information provided by the Employer, nor shall it be required to pay the costs of defending claims which are ultimately found to be without merit or justification.

ARTICLE VIII

GENERAL

1. It is distinctly understood and agreed by the Union that the Employers reserve the right of management at all times, and that they may select, to retain in their employ, in case of reduction of forces, those workmen who are, in their estimation, the best qualified.

2. The Employer may discharge any workman whose work is unsatisfactory. The Union shall have the right of appeal on behalf of any discharged workmen in accordance with the grievance procedure set forth in this Agreement provided the employee has been employed a minimum of thirty (30) working days.

3. The Employer shall provide workmen's compensation protection against injury or occupational disease and unemployment compensation protection for employees whether or not required to do so by Missouri or Kansas state laws.

4. The Union agrees that if, with respect to work defined in Article III and to be performed within the jurisdiction as set forth in Article I of this Agreement, it makes any agreement with any other employer containing any terms or conditions which, in the opinion of the Employer, are more favorable to such other employer than those provided herein, any or all of such terms or conditions, at the option of the Employer, shall automatically become a part of this Agreement, except that terms and conditions of other contracts applicable to Utility and Development work shall be applicable only to Utility and Development work performed by the Employer and terms and conditions of other contracts applicable to other than Utility and Development work shall be applicable only to similar type work performed by the Employer that is not Utility and Development work. Any change in terms and conditions resulting from Paragraph 5 of this Article will not be considered more favorable for the purposes of this paragraph.

5. In areas where open shop work is predominant or non-union contractors are known to be bidding a project, at the request of either party the Association and the Union agree to hold a pre-bid conference with all crafts prior to bidding for the purpose of considering wages and working conditions, it being understood that all crafts will be treated on an equal basis.

6. No employee, because of the execution of this Agreement, shall suffer any reduction in his hourly rate of pay for work which he continues to perform on that project on which he is working on the date of execution of this Agreement.

ARTICLE IX

WORKING CONDITIONS

1. Any workmen may be shifted by the Employer from one classification of engineer's work to another classification of engineer's work, or from one piece of engineer's equipment to another piece of engineer's equipment, provided the workman is capable of performing the other work and is paid the rate of wages for the classification which provides the higher wage rate.

2. Classification of wages for new equipment shall be negotiated between the Employer and the Union within fifteen (15) days after equipment has been marketed in the area and the rate agreed upon or awarded shall be effective as of the date equipment is put into use.

3. Where greasers or oilers are not employed, engineers operating the equipment shall service machines during the shift or be paid at the overtime rate of wages if greasing is done before or after the regular work day.

4. Operators shall not start their machines until the regular starting time and shall be allowed time to return to the parking station or shop by the end of the work day, except the provisions of the foregoing shall not apply in connection with the operation of floating plant.

5. If the Employer requires the men to remain on the job during a stoppage of work, they must be paid continuous time.

6. No employee shall leave any piece of equipment by quitting unless he has been properly replaced with another qualified man.

7. All workmen employed under this Agreement shall be classified in accordance with the Schedule of Wages of this Agreement. Any question relative to the classification will be settled by the Employer and the Union representatives, or as hereinafter provided.

8. The authorized representatives of the Union may visit the job during working hours and make any reasonable check of membership or grievance either with the superintendent or employees so long as they do not hinder or interfere with the progress of the work.

9. Where feasible, when needed for the protection of the engineer and/or oiler, the Employer shall provide curtains in winter and heaters in crane-type equipment, and summer engine fans on mobile equipment, adequate sanitary facilities on the project and ice water in warm weather. Equipment shall be maintained in such condition as not to impair the health or safety of the engineer and/or oiler.

If such provisions are not provided where feasible and machines are placed in operation, the engineer shall immediately lay up his machine until such time as the provisions of the contract are complied with.

10. Operators and/or oilers shall not be responsible for over-width, over-length or over-weight in regard to the transportation of equipment.

11. Whenever a workman is operating a machine at a location where no other men are working, and if that workman's safety requires that another person be within call, a person shall work with him.

12. Except as set forth in this paragraph, nothing contained in this Agreement shall be interpreted to preclude the Employer from assigning work. All employees, regardless of craft to which they belong, shall perform whatever duties to which they may be assigned by the Employer. If Engineer equipment is on the job site, there shall be sufficient Engineers on the job to perform the Engineer work scheduled to be performed on that equipment, provided, however, Engineers, at no reduction in pay, will also perform whatever other work is assigned them whenever the Employer determines that the performance of such other work is necessary.

13. When two or more Engineers are working on the same job, no Engineers are allowed to be laid off and one of the other Engineers take his place for the remainder of the day. The Engineer or Oiler assigned to a machine on a given day shall work the regular and overtime hours on such machine on such day if the machine is operated.

14. In order to provide a safe workplace and to reduce or eliminate unsafe conditions, the drug testing and assistance program as set forth and described in the Heavy Constructors Association Drug Testing and Assistance Program is hereby adopted and incorporated herein by reference. Testing shall be limited to new hires, candidates for promotion, random testing, and cases of "cause" as defined in the program. In addition, if the Employer, for reasons of compliance with regulations or insurance carrier requirements, adopts a company drug testing program applicable to all employees (including officers, supervisors, administrators, and professional employees), said program shall be equally applicable to the employees of the employer covered hereby.

ARTICLE X

REPAIRS AND MAINTENANCE

1. Mechanics are employed by the Employer because of their knowledge of equipment and their ability to make whatever repairs may be required, and to this end when mechanics are engaged in the repair of equipment, the Employer may retain the operator to assist the mechanic or the Employer may transfer the operator until needed repairs are completed. If the operator is retained to assist the mechanic nothing herein contained shall require the Employer to retain the operator for more hours than are being

regularly worked on the particular shift or job. All maintenance repair work or mechanical work on equipment operated by engineers on the jobsite which is to be performed by Company employees shall be done by an Operating Engineer. When Teamster equipment and operating engineers' equipment is on the job site, it shall not be a violation of this Agreement for either Teamster or Operating Engineer employees to perform maintenance, repair work or mechanical work on such equipment. On all equipment normally operated by Operating Engineers, the repairs shall be done by mechanics of the Operating Engineers.

2. Mechanics employed under this Agreement shall be required to provide all necessary hand tools.

3. The Employer shall furnish vehicles for service and transportation, including pickups or other equipment on the job site. Mechanics shall be furnished up-to-date adequate pickups, with built-in boxes and racks for their tools, with adequate locks. Gasoline, oil and filters for such equipment shall be furnished by the Employer.

If such transportation is not provided for use to and from the job, all time spent in transferring tools to and from company vehicles on the job site shall be paid for at the applicable rate.

4. A Helper shall not furnish tools of any kind on the job while employed under this Agreement. A Helper shall be raised to the Mechanic classification as soon as he is capable of doing the work of a Mechanic.

ARTICLE XI

SMALL MACHINES

The Operating Engineers Union shall have jurisdiction over the operation of all small machines such as: Light plants or generators 7 1/2 k.w. or over; compressors 105 feet and over; pumps 4 inches and over, except those electric pumps used in dewatering wells; welding machines over 300 amp. except microwave welding machines; other automatic machines such as small light plants or generators; pumps; air compressors; conveyors; power operated heaters; welding machines; or any other small automatic machines.

ARTICLE XII

WORKING CONDITIONS, HOURS AND WEEK

The Regular Work Week Shall Start on Monday.

1. A regular work week shall consist of not more than forty (40) hours work and all work performed over and above ten (10) hours per day or forty (40) hours per week shall be paid at the rate of time and one-half. Double time shall be paid for work on Sunday or

recognized holidays when and only if any other craft employees of the same employer at work on that same job site are receiving double time pay for that Sunday or holiday work.

2. Employees shall be permitted thirty (30) minutes off without pay for lunch approximately in the middle of the shift. If an employee is not permitted a 30 minute lunch break, the employee will be paid time and one-half for working through the lunch period and will be allowed a short time to eat.

3. A work day is to begin between 6:00 a.m. and 9:00 a.m. at the option of the Employer except when inclement weather or other conditions beyond the reasonable control of the Employer prevent work, in which event, the starting time may be delayed, but not later than 12:00 noon.

A. The Employer may establish other working hours on the project, in which event employees starting at those other times, shall be paid their regular rates of pay, plus fifty cents (\$0.50) per hour premium for hours worked.

4. Workmen shall report each working day except when the Employer has notified them not to do so.

A. If employees are not notified before leaving the job that there will be no work on the following day or if the employees are not notified that there will be no work, the employees who report shall receive one (1) hour's time for reporting, and four (4) hours if put to work, unless failure to provide work is due to inclement weather or weather related conditions.

B. If employees are required to remain on the job after regular starting time, they will be considered working.

C. Any employee being laid off any time during the day for any reason shall immediately lay up his equipment for the remainder of the day, and he must remain away from it for the remainder of the day unless he is called to report back to work, in which case he shall receive not less than eight (8) hours time at regular scale of wages for that day.

D. The employee will keep the Employer advised at all times of his correct address and telephone number.

E. Overtime shall be computed at one-half hour intervals.

5. Workmen must be paid from the time they take their tools from the tool box, tool truck or tool shed, and must be allowed time to put them up at the end of the work day.

6. Workmen shall receive time and one-half for all work performed on Sundays and Holidays. There shall be no pyramiding of overtime.

7. New employees covered by this Agreement who have begun work for the Employer during the middle of a workweek shall be paid either at the normal rate of pay or at the premium rate of pay as determined by the rate of pay being received by the majority of the crew.

8. Recognized holidays shall be as follows: New Year's Day, Decoration Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, or days observed as such. No work shall be performed on Labor Day, except in case of jeopardy of life or property. This rule is applied to protect Labor Day.

When one of the above holidays falls on a Saturday, the preceding Friday shall be observed; when the holiday falls on a Sunday, the following Monday shall be observed. Where one of the holidays specified falls or is observed during the workweek, then all work performed over and above thirty-two (32) hours in that week shall be paid at the rate of time and one-half (1.5).

9. An employee regularly operating or assigned to a piece of equipment during a workweek will be given the opportunity to work any overtime (including Saturday and Sunday) involving operation of that equipment during the same workweek if the same crew and work and working conditions continue into the time of the overtime pay. However, no such preference shall be applicable if the employee is unavailable, if the employee elects not to work overtime, if the need to operate the equipment was not planned and foreseeable or if such assignment is impractical or inefficient. Further, if the equipment is needed on an unexpected, incidental or occasional basis during an overtime pay period, operation of the equipment may be assigned to any qualified operator then at work on the job.

ARTICLE XIII

ASPHALT FACILITIES

All asphalt plants shall be operated by operating engineers.

All repairs and maintenance on asphalt plants shall be performed by operating engineers under this Agreement

ARTICLE XIV

WAGE RATES AND SUPPLEMENTAL DUES

1. The following classifications of workmen and corresponding rates of wages are effective in Jackson, Clay, Platte, Cass, and Ray Counties in Missouri, and Leavenworth, Wyandotte, Miami and Johnson Counties in Kansas. Hourly rates of wages for each classification of labor are set forth in the attached Schedule of Wage Rates and

the rates of wages shown in those schedules shall apply to every workman covered by this Agreement. On projects not having Davis-Bacon or other similar State or Local wage determinations and which either last six (6) months or more from Bid Date to Completion Date, or which are over \$500,000.00 in contract amount, the rates of wages in effect on the date an Employer bid on a project covered thereby shall remain in effect for the duration of the work on said project, but not to exceed a period of more than twenty-four (24) months from the award date. On the second anniversary of the award date of the project, if the project continues, the wages will be increased by an amount equal to the effective wage increases in the first year after the date of the original award. The same procedure shall apply on the third anniversary of the date of the awarding and on all subsequent anniversaries. The current fringe benefits will be paid throughout all such projects.

2. Wages, in cash or check, shall be paid to workmen weekly at the end of the shift not later than three (3) work days after the pay period, unless approval of payrolls by governmental agencies prevents such payment at that time.

3. If a workman quits of his own accord, he shall wait for his pay until the next regular pay day and shall be paid only for the hours worked on that day.

An employee who is discharged or laid off shall be paid in full without undue delay or the penalty provision of paragraph 4 of this article will apply.

4. Failure on the part of the Employer to comply with this provision shall entitle the employee to \$250.00 damages, provided the delay is occasioned by the willful refusal of the Employer or his agent.

5. All deductions shall be furnished on detachable check stubs to each employee on regular pay day.

6. All wage payments by check shall be drawn on a bank located in the area covered by this Agreement.

7. Anything in this Agreement to the contrary notwithstanding, wages to be paid by the Employer on Davis-Bacon or similar State or Local law jobs shall not exceed those wages as determined in the Davis-Bacon or similar State or Local law wage and determination for the project involved, except on the second anniversary of the award date of the project, if the project continues, the wages will be increased by an amount equal to the effective wage increases in the first year after the date of the original award. The same procedure shall apply on the third anniversary of the date of the awarding and on all subsequent anniversaries. For purposes of this paragraph, payments to Industry Advancement shall not be considered to be a fringe benefit. In addition, current fringe benefits contributions in the amounts set forth herein, including increases in contributions required herein, will be paid throughout all such projects.

8. Supplemental Dues. Each Employer agrees to add Sixty Cents (\$0.60) to the wages of each employee for each payroll hour. In accordance with the terms of an individual and voluntary written authorization for checkoff of membership dues in form permitted by the provisions of Section 302(c) of the Labor-Management Relations Act, as amended, the Employer shall deduct from the wages of all employees covered by this Agreement said amount for each payroll hour, as supplemental dues and/or service fees.

Said sums shall be remitted to the Local Union as supplemental dues and reporting of these sums shall be made in the same manner and on the same forms provided for the payment of fringe benefit programs required under Sections 1 and 2 of this Article.

Any Employer who fails to report or make payments as provided for herein shall be subject to the same terms and conditions as provided for in Article XX for failure to report or make payments to the fringe benefits contained in this Agreement.

9. No workmen shall suffer a reduction in the wage/fringe package on a project as a result of a re-classification in this Agreement until such time as the first increase in the wage/fringe package called for in this Agreement takes effect on that project.

10. The provisions of paragraphs 1 and 7, relating to the maintenance of wage rates in effect at the time of bidding and/or Davis-Bacon, state or locally prescribed wage rates, will not be applicable on a building job where an employer signatory to this agreement is acting as a subcontractor to one which is subject to a "builders" agreement with the Union (i.e., the Joint Agreement with the Builders' Association or the Individual Building Contractors' Agreement). In such circumstances on that job, employees working under this agreement will be paid the full wages and all increases as specified in Appendix I of this agreement.

ARTICLE XV

GRIEVANCES

1. There shall be no stoppage of work on account of any dispute that may occur between the member or members of the Union and the Employer, or between the member or members of the Union and other employees on the job. If the dispute cannot be adjusted by those involved in same, it shall be taken up with members of the Employers having the contract on the jobs, and the Business Representative of the Union, but the work must proceed.

2. If the dispute still exists the Employer or the Business Representative of the Union shall notify the manager of the Heavy Constructors Association of the Greater Kansas City Area and a meeting shall be arranged by said manager between the Business Representative of the Union and the Employer and a committee of not more than three (3) from the Labor Committee of the Heavy Constructors Association of the Greater Kansas City Area. At this meeting both the Union and the Employer shall be entitled to present all

of the facts with reference to such controversy and after hearing such facts the Labor Committee shall make a recommendation with reference to settlement of such controversy. In the event the Union concurs in such recommendation the controversy shall be settled in accordance therewith. In the event the Labor Committee and Union do not agree on the recommendation for the settlement of said controversy, it shall be submitted to arbitration and the arbiter selected in accordance with the next succeeding paragraph hereof.

3. If the dispute still exists it shall be referred to a Board of Arbitration constituted as follows: one arbiter to be selected by the Employer, one arbiter to be selected by the Union, the two so chosen shall select a third by mutual agreement. Failing within a week to designate a third arbiter, the arbiter shall be designated as follows: the Conciliation Service of the United States Department of Labor shall designate three individuals from which the third arbiter will be chosen. The Union shall have the privilege of striking off one name, then the Employer shall have the privilege of striking off one name, and the remaining person shall serve as the third member and act as Chairman of the Board of Arbitration. In the case of arbitration a decision of the majority of the Board of Arbitration shall be final and binding upon all parties to this Agreement and expenses of such Chairman of the Board of Arbitration shall be borne equally by the Union and the Employer.

4. Any complaint or grievance will be barred if not presented within seven (7) days after such a complaint or grievance became known to employee. Any decision on a grievance not appealed in writing from one step of the grievance procedure to the next, within seven (7) days after a decision is announced, shall be considered as having been finally settled to the mutual satisfaction of all parties concerned and not subject to further appeal.

5. There shall be no strike, work stoppage, slow-down, picketing, or other interference with the Employer's business by employees, the Union, its officers, or its members during the life of this Agreement. There shall be no lockout of its employees by the Employer during the life of this Agreement.

6. It is also agreed by the Union that in the event of an unauthorized strike, work stoppage, slow-down or interruption of work by any employee, or employees covered by this Agreement, that the Union, its officers and representatives will take all reasonable steps to stop such action, so that normal operations may be immediately resumed by the Employer.

7. It is understood and agreed that in the event of any unauthorized strike, work stoppage, or interruption of work on the part of any employee during the life of this Agreement, one recourse and remedy among other things of the Employer in such event may be to impose such disciplinary measures as he sees fit upon the employee involved and such disciplinary action shall not be subject to grievance procedure.

8. During the term of this Agreement, the Employer shall not lock out and the Union shall not engage in a work stoppage or sympathy strike prior to an express finding by an arbitrator that such action is lawful and proper under the terms of this Agreement.

ARTICLE XVI

WORK ASSIGNMENT AND JURISDICTIONAL DISPUTES

1. It is the desire and intention of all parties to minimize jurisdictional and work assignment disputes. It is, therefore, understood and agreed that the contractor will endeavor to make employee work assignments conform to established craft or bargaining unit jurisdictional lines.

2. Work assignments made by the Contractors shall be respected by all Unions, and the craft to which the work is assigned shall continue to perform the work in question unless and until a contrary decision is rendered pursuant to the following section.

3. There shall be no stoppage of work on account of any jurisdictional dispute that may occur between the members of the Unions and the Contractor, or between the member or members of the Unions and other employees on the job. If the jurisdictional dispute cannot be adjusted by those involved in same, it shall be taken up with the Contractor having the contract on the job and the business representative of the Unions, but the work must proceed.

ARTICLE XVII

SAVINGS CLAUSE

This Agreement is intended to be in conformity with all applicable and valid state, municipal, or federal laws, rules and regulations and any conflict between the provisions of this Agreement and the terms of any such laws and regulations shall cause the provisions of this Agreement so in conflict, to be superseded or annulled, but shall not supersede or annul the terms and the provisions of this Agreement which are not so in conflict.

In the event that any article or section is held invalid or enforcement of or compliance with which has been restrained, as above set forth, the parties affected thereby shall enter into collective bargaining negotiations no later than two work weeks following the date of such invalidity on the request of either party for the purpose of arriving at a mutually satisfactory replacement for such article or section during the period of invalidity or restraint. If the parties do not agree on a mutually satisfactory replacement, within two (2) weeks, either party shall be permitted to take the issue to arbitration.

ARTICLE XVIII

FRINGE BENEFITS, APPRENTICESHIP AND INDUSTRY ADVANCEMENT FUND

1. Health and Welfare. In addition to the wages set out in the Schedule attached to this Agreement, each Employer agrees to pay Three Dollars Sixty Cents (\$3.60) per hour for each payroll hour (regular or overtime) for Employees covered by this Agreement into the Local Union No. 101 Health and Welfare Fund and the parties hereto agree to be bound by the terms and provisions of the Trust Agreement establishing such Health and Welfare Fund.

2. Pension. In addition to the wages set out in the Schedule of this Agreement, each Employer agrees to pay Four Dollars (\$4.00), per hour for each payroll hour (regular or overtime) for Employees covered by this Agreement, into the Operating Engineers Local 101 Pension Trust Fund, and the parties hereto agree to be bound by the terms and provisions of the Trust Agreement establishing such Pension Fund.

3. Vacation-Holiday. In addition to the wages set out in the Schedule attached to this Agreement, each Employer agrees to pay One Dollar Seven Cents (\$1.07) per hour for each payroll hour (regular or overtime) for all Employees covered by this Agreement into the Operating Engineers Local 101 Vacation-Holiday Fund.

4. Apprenticeship. In addition to the wages set out in the Schedule attached to this Agreement, each Employer agrees to pay Thirty Cents (\$.30) per hour for each payroll hour (regular or overtime) to a jointly administered Trust Fund established for the purpose of providing for the training of apprentices. The payment and reporting of this contribution shall be made in the same manner and on the same forms provided by the Trustees for the payment of other fringe benefit programs required under Sections 1 and 2 of this Article.

5. Industry Advancement. Employers signatory to this Agreement agree to pay for all work performed under this Agreement Twenty Cents (\$.20) per hour for each hour paid to employees covered by this Agreement into the Heavy Constructors Association of the Greater Kansas City Area Industry Advancement Fund. Employers signatory to this Agreement agree to accept and be bound by the terms and provisions of the Agreement and Declaration of Trust establishing the said Advancement Fund.

Details of reporting, payment (on the same forms provided for the payment of fringe benefit programs required under Sections 1 and 2 of this Article) and administration of such contribution shall be governed by the terms of the Trust Agreement creating the Foundation, except as otherwise set forth in this Agreement. All Trustees of said Trust shall be members of the Association appointed by the Board of Directors, and any disbursement therefrom shall be at the direction of the Trustees, and at their direction only. The said Trust Agreement shall specifically provide that no funds shall be disbursed therefrom for the purpose of lobbying in support of anti-labor legislation and/or to subsidize

Employers by the payment of monies to them or on their behalf in connection with work stoppages or strikes against such Employers or to be used to defray expenses arising from any labor dispute or controversy.

6. Should the trustees of the Heavy Constructors Association Industry Advancement Fund deem it necessary, the trustees may increase the hourly Industry Advancement Fund contribution upon sixty (60) days' advance notice to the Unions and signatory contractors. Such increase will not impact the wage package hereto agreed.

7. Enforcement of Sections 1, 2, 3, 4, 5 and 6 above shall be governed by and in accordance with Article XX of this Agreement.

8. The Union or applicable Trustees, upon sixty (60) days' notice prior to 04/01/2003, 04/01/2004 or 04/01/2005, may allocate the economic increase to health and welfare contribution, pension contribution, training contribution, vacation contribution or supplemental dues so long as the total fringe benefit contributions and wage rate does not exceed the total economic package as set forth in Appendix I.

ARTICLE XIX

EMPLOYEE SAVINGS ACCOUNTS

1. Pursuant to a resolution to be adopted by the Trustees of the Operating Engineers Local 101 Vacation-Holiday Fund, effective for the life of this Agreement, the Trustees of said Fund will immediately transfer all payments made pursuant to Article XVIII, paragraph 3, of this Agreement to the United Labor Credit Union for deposit into Employee savings accounts in the United Labor Credit Union.

2. Said transfers will be made by the Trustees in the name of individual Employees, and the United Labor Credit Union will be responsible for the correct disbursement of the funds into each Employee's account.

3. The United Labor Credit Union will acknowledge receipt of all funds transferred pursuant to this Article and certify deposit of said funds into the appropriate Employee account on reporting forms agreeable to the Trustees. Thereafter, the funds will be the property of, and under complete and exclusive control of, the individual Employees and the Trustees will have no further responsibility for or control over said funds.

ARTICLE XX

ENFORCEMENT OF ARTICLE XVIII FRINGE BENEFIT CONTRIBUTIONS

1. The Employers agree to furnish the Trustees of each Trust Fund established under Article XVIII, upon request, such information and reports as the Trustees may

require in the performance of their duties under the Agreements and Declaration of Trust. The Trustees or any authorized agents or representatives of the Trustees shall have the right at all reasonable times during business hours to enter upon the premises of an Employer and to examine and copy such of the books, records, papers and records of the payrolls only, of the Employer as may be necessary to permit the Trustees to determine whether the Employer is fully complying with the provisions of Article XVIII. It is further agreed by the Employers that a duly authorized officer or officers of Operating Engineers Local 101 shall at all reasonable times during business hours be provided such information and reports as may be necessary or desired to establish or verify compliance with payments into the Operating Engineers Local 101 Vacation-Holiday Fund. It is further agreed that the enforcement provisions of the following Sections 2, 3, 4, 5 and 6 of this Article XX shall apply to the Operating Engineers Local 101 Vacation-Holiday Fund.

2. No employee shall have the option to receive instead of the benefits provided for by the agreements and declarations of trust any part of the payment of an Employer. No employee shall have the option to assign any benefits to which he may be or become entitled under the agreements and declarations of trust, or to receive a cash consideration in lieu of such benefits either upon termination of the trust therein created or through severance of employment or otherwise.

3. In the event that the Union receives written notice from one or more of the Trustees or any authorized agent or representative of the Trustees of any fund that an Employer has failed to pay in full any sum due any Trustees under Article XVIII and that such failure has continued fifteen (15) days, the Union may, after at least one (1) week's notice in writing to the Employer's main office, direct the employees of such Employer to discontinue or refuse to work for such Employer until all sums due from that Employer under the appropriate section, by the local Union, have been paid in full. The remedy provided for in this section shall be in addition to all other remedies available to the Union and to the Trustees, and may be exercised by the Union, anything in the collective bargaining agreement to the contrary notwithstanding.

4. The Trustees, in their own names as Trustees, may institute or intervene in any proceeding at law or equity or in bankruptcy for the purpose of effectuating the collection of any sums due to them from the Employer under the provisions of Article XVIII.

5. Payment of sums due under Article XVIII shall be made to the Trustees in accordance with this Agreement. If payment of such sums is made later than the 25th of the following month, the Employers agree to add ten percent (10%) to the amount due as liquidated damages.

6. If the Trustees incur liabilities for attorney's fees in order to assist them in the collection of delinquent payments due under Article XVIII, and the ten percent (10%) damages under Section 5, the Employer agrees to pay in addition to such sums and liquidated damages a reasonable attorney's fee incurred by the Trustees.

7. The trustees of the aforementioned Funds have the specific authority to require that out of town visiting contractors and local contractors, who have a history of chronic delinquencies in the remittance of fringe contribution payments, post a bond to guarantee the payment of fringe benefits. The adequacy of the bond shall be reasonably determined by said trustees.

ARTICLE XXI

EQUAL EMPLOYMENT OPPORTUNITY

1. The Employers and the Union agree that they will not unlawfully discriminate against any employee or applicant for employment because of his or her age, sex, race, creed, religion, color, national origin, being handicapped or being a Vietnam Era Veteran or a disabled Veteran. The Employer will take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, national origin, age or sex. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates or other forms of compensation; and selection for training.

2. The Union agrees that they will not discriminate against any applicant for employment or referral because of race, creed, color, national origin, age or sex. The Union further agrees to refer applicants for employment without discrimination as to race, creed, color, national origin, age or sex. The Union further agrees to place all applicants for employment on the hiring list in accordance with the applicable law and the collective bargaining agreement; not to identify these applicants as to race, creed, color, national origin, age or sex; and refer them without discrimination because of race, creed, color, national origin, age or sex as their turn comes up on the hiring list, or as otherwise specified by the collective bargaining agreement, if their qualifications meet those required by the Employer.

3. The Employer and the Union agree to comply with all the provisions of Title VII of the Civil Rights Act of 1964 (Public Law 88-352), the rules, regulations and relevant order of the Equal Employment Opportunity Commission established thereunder and Executive Order 11246.

ARTICLE XXII

EFFECTIVE DATES

1. This Agreement will be effective when executed and will remain in force and effect until March 31, 2006, and thereafter from year to year unless written notice is sent by registered mail, given by one of the parties hereto, to the other party hereto, sixty (60) days in advance of March 31, 2006, or March 31 of any succeeding year if said parties desire to amend or abrogate this Agreement. If either party gives notice of its desire to

terminate this Agreement in the manner herein set out sixty (60) days prior to March 31, 2006, all obligations under this Agreement shall cease on March 31, 2006. If said Agreement is extended beyond March 31, 2006, it may be terminated on March 31 of any succeeding year in the same manner.

2. This Agreement covers the entire understanding between the parties hereto. No oral or written rule, regulation or understanding which is not mentioned or referred to herein will be of any force or effect upon any party hereto. Whenever this Agreement is in conflict with the customs or working rules of the Union, then this Agreement shall supersede all such portion of said customs or working rules which are in conflict with this Agreement.

ARTICLE XXIII

FRINGE BENEFIT PAYMENT SCHEDULE

(For More Details See Article XVIII)

	<u>Current</u>
Welfare	\$3.60
Pension	4.00
Vacation-Holiday	1.07
Apprenticeship	.30
Advancement	<u>.20</u>
	\$9.17

ARTICLE XXIV

WAGE RATES AND CLASSIFICATIONS

1. Except as otherwise provided below, the wage rates listed herein for all classifications as listed, plus fringe benefits plus all premiums as contained in wage classifications shall be paid.

No workmen shall suffer a reduction in the wage/fringe package on a project as a result of a re-classification in this Agreement until such time as the first increase in the wage/fringe package called for in this Agreement takes effect on that project.

Group I

Roller Operator, all types
Asphalt Paver and Spreader
Asphalt Plant Operator
Concrete Plant Operator

La Tourneau Rooter (all tiller types)
Concrete Mixer Paver
Slip Form Paver Operator (CMI, Rex, Gomeco or equal)
Finishing Machine Operator
Auto Grader or Trimmer or Sub-Grader
Side Discharge Spreader
Concrete Pump Operator
Back Hoe
Blade Operator (All Types)
Bulldozer Operator
High Loader - Fork Lift - Skid Loader (All Types)
Quad Track
Scraper Operators (All Types)
Push Cat
Ditching Machine

Boilers - 2
Booster Pump on Dredge
Dredge Engineman
Dredge Operator
Tow Boat Operator
Hoisting Engineer (2 Active Drums)
Crane Operator
Derrick or Derrick Trucks
Drag Line Operator
Pile Drive Operator
Pitman Crane or Boom Truck (All Types)
Shovel Operator
Truck Crane
Clamshell Operator
Drilling or Boring Machine (Rotary - Self Propelled)
Boring Machine (Truck or Crane Mounted)

Skimmer Scoop Operator
Mucking Machine Operator
Sideboom Cats
Locomotive Operator (Standard Gage)

Drillcat with Compressor Mounted (Self-Contained) or
Similar Type Self Propelled Rotary Drill (not air tract)
Mechanics and Welders (Field and Plants)

Wood and Log Chippers (All Types)
Greaser

Heavy Equipment Robotics Operator/Mechanic
Concrete Cleaning Decontamination Machine Operator
Ultra High Pressure Waterjet Cutting Tool System Operator/Mechanic
Vacuum Blasting Machine Operator/Mechanic
Master Environmental Maintenance Mechanic

Horizontal Directional Drill Operator
Horizontal Directional Drill Locator

Group II

"A" Frame Truck Operator
Articulated Dump Truck
Hoisting Engine (One Drum)

Boilers (1)
Distributor Operator
Fireman Rig
Tank Car Heater Operator (Combination Boiler and Booster)
Chip Spreader

Back Filler Operator
Farm Tractor (All Attachments)
Multiple Compactor

Concrete Mixer Operator, Skip Loader
Elevating Grader Operator
Pavement Breaker, Self Propelled Hydra-Hammer (or Similar Type)
Power Shield
Churn Drill Operator
Concrete Saws (Self Propelled)
Conveyor Operator
Float Operator
Form Grader Operator
Screening and Washing Plant
Siphons and Jets
Vibrating Machine Operator (Not Hand Held)

Crusher Operator
Conveyor Operator
Paymill Operator

Maintenance Operator
Welding Machine

Compressor
Pumps

Self-Propelled Street Broom or Sweeper
Stump Cutting Machine
Straw Blower

Group III

Mechanic Helper (Field)
Oiler
Oiler Driver (All Types)
Mechanic, Permanent Shop
Mechanic's Helper, Permanent Shop

CURRENT WAGE RATES AND ECONOMIC PACKAGE INCREASES FOR APRIL 1, 2002, APRIL 1, 2003, APRIL 1, 2004 AND APRIL 1, 2005 ARE SET FORTH ON APPENDIX I ATTACHED HERETO.

2. Hourly Premiums:

Clamshells, 3-yd capacity or over \$0.25
Crane or Rigs, 80 ft. of boom or over
(including jib) \$0.25
Draglines, 3-yd capacity or over. \$0.25
Pile Drivers, 80 ft. of boom or over
(including jib) \$0.25
Shovels and Backhoes, 3-yd capacity or
over. \$0.25

ARTICLE XXV

WAGES FOR APPRENTICES

1. The rate of wages for the Apprentice are based on a reduction from the wage rate as established in the collective bargaining agreement in the area to the next higher multiple of five (5) cents, in the event fractions or odd cents are involved.

2. The following schedule of twelve (12) month periods shall be the hourly rate of wages for the Apprentice or Apprentice-Oiler:

Apprentice--

First Period: 65%)
Second Period: 75%) Of Group I Rate.

Third Period: 85%)

Apprentice-Oiler --

First Period: 65%)

Second Period: 75%) Of the Oiler Rate.

Third Period: 85%)

3. The pay rate of the Apprentice shall be for the proper period of training as determined by the committee/and or stipulated in the apprenticeship agreement.

4. Fringes. Apprentices shall receive all fringe benefit payments included in the collective bargaining agreement covering the area in which he works.

5. One (1) Oiler or Apprentice-Oiler shall be employed on each job where the contractor is operating a crane or cranes with an Operating Engineer. The contractor may substitute an Oiler for the Apprentice-Oiler, at his discretion. Self-propelled hydraulic cranes and hydraulic backhoes will not be considered cranes for the purposes of this paragraph.

ARTICLE XXVI

SUBCONTRACTING

1. The Employer agrees that whenever work covered by this Agreement for which wages and fringes are predetermined by the Davis-Bacon Act or similar state or city law is to be subcontracted, it shall be subcontracted only to Employers whose employees performing such work receive wages and fringe benefits collectively and other conditions of employment equal to or better than those contained in this Agreement.

2. No such subcontractor shall be required to enter into any agreement as a condition of such subcontract, requiring or related to Union recognition, Union security or bargaining representation or which requires the adoption of or participation in any trust fund provisions.

3. Subject to the above provisions, nothing contained in this Article shall be construed to force or require any Employer to cease or refrain from doing business with any specific person or Employer or otherwise require the disruption of any existing business relationship with any other Employer or person.

4. The Employer agrees that when work covered by this Agreement is subcontracted, the subcontractor shall meet the following requirements:

A. Insurance. The subcontractor shall possess a current certificate of insurance from an insurance company authorized to write insurance by the Department of Insurance of the states of Missouri and/or Kansas.

B. Licenses. Subcontractor shall possess a current occupational and all other applicable licenses if required by municipal ordinance.

C. Good Standing. Subcontractor shall possess a certificate of corporate good standing from Missouri or Kansas or other state of incorporation and/or information as to the form of corporate or business organization, including federal employer identification number and state unemployment insurance information.

D. Payroll Taxes. The subcontractor shall submit to contractor, if requested, an affidavit of compliance with all applicable city, state, and federal withholding tax requirements.

E. Compliance. Subcontractor shall submit to contractor, if requested, an affidavit signed by an officer of the company, or head of the business organization, stating that subcontractor is current (including payments required during the preceding sixty days) on all fringe benefit payments or contributions and prevailing wage requirements on present and past projects.

F. Affirmative Action. Subcontractor shall possess certificate of compliance from appropriate local agency concerning that agency's affirmative action obligations, if applicable, and if regularly provided.

IN WITNESS WHEREOF, the parties hereto have set their hands this ____ day of _____, 2002.

THE HEAVY CONSTRUCTORS ASSOC-
IATION OF THE GREATER KANSAS
CITY AREA

LOCAL 101, INTERNATIONAL
UNION OF OPERATING
ENGINEERS, HOISTING AND
PORTABLE

By _____
President

By _____
President and Business Manager

APPROVED: LABOR COMMITTEE OF THE
HEAVY CONSTRUCTORS ASSOCIATION
OF THE GREATER KANSAS CITY AREA

By _____
Recording Secretary

Chairman

APPENDIX I
WAGE RATES AND FRINGE SUMMARY

	Wages	+	Supp. Dues =	04/01/02	04/01/03	04/01/04	04/01/05
						<u>Increases</u>	
Group I	\$23.19		\$0.60	\$23.79	1.50	1.50	1.50
Group II	22.15		0.60	22.75	1.50	1.50	1.50
Group III							
Mechanic Helper Fld.	20.47		0.60	21.07	1.50	1.50	1.50
Oiler	17.68		0.60	18.28	1.50	1.50	1.50
Oiler Driver (All Types)	21.03		0.60	21.63	1.50	1.50	1.50
Mechanic, Perm Shop	21.84		0.60	22.44	1.50	1.50	1.50
Mechanic Helper, Perm Shop	15.49		0.60	16.09	1.50	1.50	1.50
Fringes:	<u>04/01/02</u>						
Welfare	\$3.60						
Pension	4.00						
Vacation	1.07						
Training	<u>.30</u>						
	\$8.97						
Industry Advancement Fund	\$0.20						