

K 8185
1,100 workers

14 pgs.

4/1/2002 - 3/31/2007
2002-2007

TUNNEL AND SHAFT CONSTRUCTION AGREEMENT

Between

**LOCAL UNION No. 435
LABORERS INTERNATIONAL
UNION OF NORTH AMERICA**

**AND CERTAIN
INDEPENDENT CONTRACTORS**

INDEX

	PAGE
Preamble	1
ARTICLE	
I. Liability	1
II. Definition	2
III. Geographical Jurisdiction	2
IV. Union Jurisdiction	3
V. Pre-Job Conference	4
VI. Union Rights	5
VII. Work Conditions	8
VIII. Hours of Work	11
IX. Holidays	13
X. Show-Up Time	14
XI. Pay Day and Mode of Payment	15
XII. Laborer Foreman	16
XIII. Subcontracting	16
XIV. Safety	18
XV. Pension, Welfare, S.U.B., Annuity and Training Funds	21
XVI. Carryover	23
XVII. Watchmen and Guards	24
XVIII. Arbitration	25
XIX. Deductions	30
XX. Apprenticeship	31
XXI. Equal Employment Opportunity	32
XXII. Most Favorite Nation	32
XXIII. Savings Clause	33
XXIV. Wages	33
XXV. Duration and Termination	37

TUNNEL AND SHAFT CONSTRUCTION AGREEMENT

FREE AIR

PREAMBLE

THIS AGREEMENT, made this 1st day of April,
2002, by and between _____

CONTRACTOR

Local Union 435 of the LABORERS INTERNATIONAL UNION OF NORTH AMERICA, affiliated with A.F.L.-C.I.O. (Hereinafter referred to as the "Union").

WITNESSETH

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

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

ARTICLE I Liability

1. The Unions named herein are negotiating agents for their present and future members. For any breach of this Agreement the Liability of the members of the Local Unions shall be several and not joint.



ARTICLE II Definition

1. This Agreement shall apply to all Free Air Tunnel and Shaft Construction Operations, including but not limited to: the excavation of storage facilities, control centers, surge chambers, water and waste systems, and subways, including the lining of same and all appurtenant work and paid at the rates negotiated herein.

2. On contracts that are for the construction of tunnels and/or shafts only, this Agreement shall apply in its entirety.

3. This Agreement shall be effective on all work bid after the effective date of this Agreement.

ARTICLE III Geographical Jurisdiction

1. This Agreement is to cover all Tunnel and Shaft Construction work in the State of New York, in the Counties YATES, SENECA, CAYUGA, ONTARIO (Townships of So. Bristol, Canandaigua, Manchester, Hopewell, Seneca, Gorham, Phelps). WAYNE (Townships of Arcadia, Lyons, Galen, Savannah, Huron, Rose, Wolcott and Butler). MONROE, LIVINGSTON, ORLEANS, GENESEE, WYOMING and ONTARIO (Townships of Victor, Farmington, E. Bloomfield, W. Bloomfield, Richmond, Bristol and Canadice). WAYNE (Townships of Ontario, Williamson, Sodus, Walworth, Marion, Macedon and Palmyra).

ARTICLE IV Union Jurisdiction

It is agreed that Laborers' work shall include and not be limited to all watchmen; traffic control men; blasters; scalers; structural steel erection; reinforcing steel erection; welder; fence erectors; riggers; precast erectors; erection of catwalks and stairways; demolition workers; erection of guard rails; crib work of all kinds; lagging and bracing regardless of method; handling, placing and driving of all sheetpiling regardless of method; handling, placing and driving of all woodsheathing regardless of method; assembling and placing of all shoring and bracing including rock bolts; the handling, loading and unloading and stringing and installation of all material; the handling, loading, unloading and stringing of all wood products by hand or power; the sharpening of all air tool bits and drills and bull points; attending, handling and fueling of all types of heaters at all times when in use except where existing agreements provide otherwise; the handling, loading, unloading and distributing of chain-link fence; handling and erecting of wire fence; the handling, loading and unloading and distributing and installing of reinforced materials; the sandblasting and applying sealers and hardeners and epoxy on concrete work and sandblasting in its entire operation; all air mops; single diaphragm pump handled and refueled; the operating and servicing of rock drilling machines; the handling, installation and removal of all scaffolding; the laying of brick; all stone and blocklaying and tending of same; all finishing of concrete; rubbing and curing; maintaining all communication systems during construction; the handling, placing and laying all rack; drill runners; all ironwork; changehouse attendants; powder carriers; all chucktenders; nippers; brakemen; cablemen; hosemen; the handling,

placing, erecting, dismantling of all forms regardless of type or method; bottom bellmen; top bellmen; signalmen; concrete workers; shaftmen; powder watchmen; the cutting, drilling and installation of material used for timbering; retimbering, assembly and installation of multiplate; liner plate, rings, mesh, mats or forms for the shaft including the setting of rods for same; pouring, creting or gunniting of concrete or any aggregate; hydraulic jacking; placing and constructing of shields; air lines; air operated grout machines; jackhammers; the handling, placing and laying of all types of pipe conduit; all miners and miner helpers; the splitting and making of primers; the handling, installing and extending all water, air and vent lines; the placing and handling of all tile, marble and terrazo; the operating of all air, gas, electric, oil and other type of motor driven tools; handling, setting, and operating of all laser beams to perform the work needed to complete the contract and used 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 L.I.U.N.A.-A.F.L.-C.I.O. It is understood that the Employer will make a management decision as to the jurisdiction assignment of prefabricated work performed outside the limits of the shaft and tunnel. The prefabricated work will be incorporated into the shaft and tunnel under the terms 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 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 intention to strike on such Employer. If the Employer does not comply within five (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 including all shifters and foremen of the Employer covered by this Agreement who are members of the Union in good standing on the effective date of this Agreement shall remain members in good standing and those who are not members on the effective date of this Agreement shall, on or after the eighth (8th) day following the effective date of this Agreement become and remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its effective date, shall on or after the eighth (8th) day following the beginning of such employment become and remain members in good standing in the Union.

2. Failure of any employee covered by this Agreement to meet the requirements described in paragraph 1 above, will upon the Union's written request, result in his discharge by the Employer.

3. The Employer agrees that in providing opportunity for employment it will give priority to persons who have had one (1) year or more of service since January 1, 1981, in the construction industry in the type of work covered by this Agreement, and in the various geographic areas described in Article III, Section 1 of this Agreement. It is understood that this clause is not applicable to Union employees who have previously been in the employment of an LRD contractor.

4. The Employer and the Union agree that the foregoing priority shall be exercised without regard to Union membership or non- membership and the Employer agrees to give the Union an opportunity to provide such additional employees as he needs.

5. It is agreed that on each job the Union Business Manager shall appoint a working shop Steward who will be named at the pre-job conference. The Laborers' Steward will be employed at all times that any Labor -work is performed or any Laborers are employed 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 for work. He will be allowed sufficient time to perform his duties and will not be discharged, laid-off, or transferred by reason of the performance of his duties as Steward without prior approval of the Business Manager.

6. The Laborers' Steward shall be notified prior to any hiring or layoff.

7. (a) At the Business Manager's request, the Laborers' Steward will be assigned to a service truck when and if a service truck is operating on the project. When the service truck is not operating on the project or in use on the project, the Steward will be assigned to other work. It is the intent of this section that the Steward be engaged as a productive

working employee at all times consistent with Section 5 of this Article.

(b) When the service truck is sent off the project, the Laborers' Steward will not accompany such truck unless ordered to do so by the Employer.

(c) When there is more than one (1) service truck operating on a project, whether a Laborer or Laborers shall be assigned to such truck or trucks, shall be at the option and discretion of the Employer consistent with the jurisdiction of the Union.

8. The Business Manager or other authorized representative of the Union shall be permitted to visit jobs during working hours for the following purposes, but in no way shall such person or persons interfere with or hinder the progress of the work.

(a) To investigate the working conditions of the job, to ascertain whether the provisions of the Agreement are being fully complied with, to investigate grievances, and to confer with the Employer in reference to Employer-Employee relations.

(b) The Employer and Union mutually agree to cooperate and consult with each other with respect to all aspects of safety, accident prevention, health, medical facilities and medical treatment to the end that the health, safety and welfare of the men working on the job may be adequately and properly promoted and protected and the prosecution of the work efficiently carried on.

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 two (2) hours time from work for additional visits to the doctor for injuries sustained while in the Employer's service without loss of pay. It shall be 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.

(c) The injured workman shall, if at all possible, be given preference to any light work, if the same is available, that may be performed on the job provided, however, that he is still in the employ of the Employer where the injury occurred and the doctor certifies in writing that the employee can do the work to which he is to be assigned.

ARTICLE VII Work Conditions

1. The Employer shall furnish all necessary tools that the employees are to use.

2. (a) At the time of hire or such later date as may be appropriate, employees covered by this Agreement shall be furnished slipover rubber boots, rain-suits and hats which shall remain the property of the Employer and be returned at the termination of use or employment.

(b) At the first full pay period following the issuing of such articles, the actual cost to the contractor of the said articles shall be deducted from the pay of each such employee covered by this contract. Upon termination of employment, such employees who return the articles issued will be refunded the amount deducted from pay.

3. Where CMI, Du-ALL or similar type fine grade machine is used, the driving of all steel pins or wooden stakes; transferring of all grades, not including transit work; placing and setting of all brackets except where transit is used to position brackets; and stringing of central line shall be the work of the Laborers. It is understood, however, that the Laborers jurisdiction commences after the completion of transit work by the Survey Party.

4. The Union recognizes Management's right to manage the work which includes the selection of types of equipment methods, crew sizes and working hours to maximize productivity.

5. The laser is a tool of the trade to be set up and taken down by the appropriate Craft or Employer.

6. The work of Pit Men and Dump Men shall be performed by Laborers.

7. When dumping concrete from centralized mix concrete trucks such as dump crete or similar type trucks, the operation of the levers from the ground shall be done by the Laborers.

8. The Union must be given forty-eight (48) hours advance notice from the Employer when men with special skills are required.

9. The Employer agrees to the principle of a coffee break in place for Employees as per past practice in the area.

10. Any new type of drilling machines used in the heading not covered by this Agreement will be subject to negotiations between the Company and the Union.

11. The Employer agrees to give the Union forty-eight (48) hours advance notice of the Employer's intent to starting heading or shift gangs. This shall not bar hiring without such notice

to the extent that emergencies or unusual conditions beyond the control of the Employer shall have rendered it impracticable to give such notice.

12. Tending of cable for muckers and all handling to be done by a chuck tender. Job site grinding of bits is to be done by a miner.

13. Except in emergencies, Laborers shall receive their orders from a Shifter covered by this Agreement.

14. The Shifter shall receive his orders from the Employer, Superintendent or other designated individual.

15. There will be total mobility between Locals of all Shifters.

16. CHANGEHOUSE. A changehouse shall be provided for each job. If secondary shafts are used the distance between any such secondary shaft and changehouse shall not be excessive. More than one (1) changehouse may be appropriate on a project based on the number and location of access points. The dressing room of the changehouse shall contain individual lockers for all employees with suitable facilities for drying of work clothes. There shall be showers with plenty of hot and cold water with soap obtainable at all times. The dressing room shall be kept in a clean and sanitary condition and properly ventilated. There shall be a changehouse man to each shift and who will be assigned to other duties. The Employer shall also assume responsibility in case of loss from fire. Employees shall be required to execute a verified proof of loss in case of fire.

17. TEMPORARY HEAT. Where coke, oil, bottled gas or similar type salamanders are used to provide the temporary heat required for the drying of masonry, concrete work and any other purpose, they shall be attended by Laborers. The Union and

the Employer shall negotiate the terms and conditions for this work beyond the normal work week.

18. All provisions of the Labor Law of the State of New York and all other provisions of Law and regulations including the obligation of the Employer to provide necessary Workmen's Compensation, Social Security, Unemployment, Insurance, etc. are hereby incorporated in this Agreement and made a part hereof, and the Employer agrees to comply with and perform all such obligations imposed upon it.

19. (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 and it shall be the decision of the Union whether to take recourse to the grievance procedure.

ARTICLE VIII Hours of Work

1. The work week shall consist of Monday through Friday.

2. Normal work day shall consist of eight (8) hours with one-half (½) hour for lunch. The starting time shall be set by the Contractor except that starting time shall not be changed from day to day. The work day must start no sooner than 6:00 a.m. nor late than 8:00 a.m., except as may be otherwise mutually agreed upon by the Employer and Union.

3. The work day shall begin at the heading and end at the changehouse. It is the intention of this clause that there shall be no stoppage of work at the heading.

4. Two (2) shifts may be worked in twenty-four (24) hours and shall be of equal duration and at the same rate. However, in a two (2) shift operation, where the combined number of hours worked by the two (2) 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 showup time provisions contained herein in Article X. This clause is equally applicable to the three (3) shift provisions hereinafter contained in Section 5. 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. On multiple shift work the first shift may start at 6:00 a.m.

5. 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	
7½ hours work	8 hours pay
3rd shift	
7 hours work	8 hours pay

Each shift shall have one-half (½) 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 multiple shift work the first shift may start at 6:00 a.m.

6. The lunch period shall be observed between the third (3rd) and the fifth (5th) hour of work after the start of each shift. The workers and/or crews may be split for the lunch period in order to maintain continuous operation. Lunch will be taken in the tunnel at a mutually agreed location.

7. 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.

8. One and one-half (1½) times the rates set forth in this Agreement shall be paid for work performed outside the scheduled work day and all work performed on Saturday. All work performed on Sunday will be paid at double time.

9. All eligible employees shall be allowed time off to vote on Election Day in accordance with applicable Law.

ARTICLE IX Holidays

1. Paid holidays to be observed are Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day, irrespective of the day of the week on which the holiday may fall. If the holiday falls on Sunday, it will be celebrated on Monday. In the event that men work on

this Sunday Holiday, they shall be paid double time. In the event that men work on Monday, they shall be compensated at triple time. Accordingly, the Monday following the Sunday is treated as the holiday.

2. Any employee laid off within the week in which a holiday falls shall receive holiday pay, except that if a new employee is employed by an employer for one (1) day only during this period, He shall not be entitled to holiday pay.

3. A man must work the working day before and the working day after a holiday to receive holiday pay. However, an employee not able to report because of proven sickness, death in immediate family or accident shall be entitled to holiday pay.

4. If a man is ordered out and reports for work on a holiday, set forth in Section 1 above, and does not start, then he shall be paid a minimum of four (4) hours straight time in addition to the straight time given for said paid holiday. If he starts work on a paid holiday, he shall be paid a minimum of eight (8) hours pay at double time plus the holiday pay.

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 showup 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, receive eight (8) hours pay if unable to work until normal quitting time.

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. 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 will pay a penalty of two (2) straight time hours for pay day and for each succeeding day- on which he fails to pay where such failure to pay is willful or due to conditions within the Employer's control.

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.

3. If any employee is discharged or laid off, all accrued wages shall be due and paid immediately, except that by mutual agreement an employee may be paid by check mailed within twenty-four (24) hours. If not mailed within 24 hours, such employee shall be paid an additional \$25.00 for each additional 24 hour period the check was not mailed.

ARTICLE XII Laborer Foreman

1. When more than three (3) employees covered by this Agreement are employed, a Laborer Foreman will be designated by the Employer. Designated Foreman shall assume the keeping of time for employees covered by this Agreement.

2. Laborer Foreman (concrete, heading, 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 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.

3. With respect to all other Foremen, the Union agrees not to impose more than 50% restriction on the Contractor's Foreman requirements per project in connection with an individual's necessary membership in a particular Local (50% mobility) provided he is a member of a Union party to this Agreement. However, there may be 100% mobility on other foremen, for specialty work, if approved at a pre-job meeting.

ARTICLE XIII Subcontracting

1. It is agreed that if the Employer subcontracts job site work falling within the terms of this contract, provision will be made in each subcontract for the compliance by said subcontractor with terms, conditions of employment, wages, S.U.B., welfare and pension 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. With respect to subcontractors who have not signed the contract as an individual employer, the following rules shall apply:

(a) Such subcontractors shall be required to remit fringe benefit payments on a weekly basis.

(b) On the first failure of such subcontractor to remit fringe benefits or first instance on which the subcontractor is delinquent, the Union shall notify the Prime Contractor of the said failure to remit or delinquency.

(c) After having been notified of a failure to remit or of a delinquency, the Prime Contractor shall be responsible for each such fringe benefit payment pursuant to Sub-section (d) below.

(d) After notification by the Union, the Employer is responsible for checking with the funds to determine whether the regular payments are being made. However, once any non-payment has been rectified and the subcontractor resumes payments as required under Section 3(a), the Prime Contractor is relieved of any responsibility to check with the Funds until notification is again received in writing by the Union of further alleged delinquency.

(e) The Prime Contractor's responsibility is limited to fringe benefits applicable to its project on which the defaulting subcontractor is employed.

(f) The Prime Contractor does not assume the above responsibility with respect to subcontractors who are individual signatories to the labor contract.

4. 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 the Highway-Heavy 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 man or men engaged in the particular operation shall not be in violation of this contract 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 Company shall be just cause for discharge and it shall be the decision of the Union as to whether recourse will be had to the grievance procedure of this Agreement.

(b) The Union agrees to cooperate with the Company in encouraging employees to observe the safety regulations prescribed by the Company and to wear properly and utilize safety equipment as required by the Company 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. No one to ride on motor car except the brakeman and powder man. Every employee, regardless of position, is to be informed that under no circumstances whatsoever may anyone ride on the motor car except the following: powder man, brakeman, an injured employee being transported to the shaft, supervision when necessary. This rule should be strictly enforced and provisions made for disciplining any who violate it. No man shall obscure the vision of the motorman.

6. Man cars to proceed in and out of tunnel at a safe speed at all times. Man cars must be equipped with proper seating.

7. In each heading, the Shifter shall be the only one who may pull the blasting switch and shall be the last man out after the entire crew is moved back of the blasting switch.

8. Signal men to remain at their posts at all times to signal cage and assist loading and unloading men and material.

9. The cage to move only on signal man's signal and he will enforce the law. Men entering the cage must do so at the point where the signal man is stationed, and he shall not signal to raise the cage if other men over the posted capacity enter the cage.

10. Proper scaling of the heading must be done before the jumbo comes in and at all other times.

11. Employer to furnish rubber gloves and protective ointment for all employees, to be issued by Shifter in his respective gang.

12. The air in the tunnels must be kept at rate of purity, prescribed by the proper codes.

13. Goggles and face masks to be supplied to men when blowing out cars or blowing off tracks or when preparing for invert in concrete.

14. Safety chains or bolts to be provided on all air headers at all times.

15. No welding between shooting switch and heading shall be done while the powder is in the heading.

16. Any accidental stoppage or abnormal reduction of air flow from ventilating system underground shall be immediately reported to the Superintendent. Unless such condition is immediately corrected, work in the area affected by such stoppage shall cease and the workers affected shall be removed to a safe area.

17. Proper sanitary toilet facilities shall be maintained inside of tunnel at all times.

18. Stretchers to be supplied in tunnel to remove the injured.

19. All men, no matter how slight the injury, must report to the first aid office for treatment in accordance with the state law.

20. An adequate supply of blankets to be part of stretcher equipment, which will be four (4) blankets.

21. Ambulance will be determined at a pre-job conference.

22. Whenever an employee is transported by ambulance to a doctor or hospital, he shall be accompanied by one (1) of the first aid men.

23. Drinking Water. Provisions should be made for an adequate supply of clean, cool water in containers that can readily be transported from place to place with paper cups in a sealed container to keep dirt and dust from getting into them. The Shifter shall appoint one (1) man of the crew who shall be responsible for seeing to it that the water is taken out before each shot and brought back as soon as mucking starts, and the water container kept filled.

24. No alcoholic beverages will be permitted at anytime including lunch hours and no men shall be under influence of drugs or alcohol while on job. If such a situation does arise, immediate dismissal mandatory.

ARTICLE XV Pension, Welfare, S.U.B., Annuity and Training Funds

1. (a) The Employer hereby agrees to contribute the amounts hereinafter provided for in Article XXIV of this Agreement to designated Laborers' Pension, Welfare, Supplementary Unemployment Benefit, Annuity and Training Funds (hereinafter

singularly and collectively referred to as "Fund") for each actual hour worked by employees covered by this Agreement. It is the purpose of this Article to provide that where a Local Union, party to this Agreement has established a Fund jointly trusteeed by Labor and Management, then said contributions shall be paid to said Local Fund in the amounts hereinafter set forth in this Agreement.

(b) The Employers party to this Agreement accept the Trustees now serving on such Fund and hereby waive the right to name new, other successor or additional trustees.

2. The Employer agrees to contribute the amount per hour hereinafter set forth in Article XXIV for each actual hour worked except where an employee is paid pursuant to the 2-4-8 clause herein provided for at Article X of this Agreement in which case contributions shall be paid on the same basis as the 2-4-8 clause.

3. Each Local Union party to this Agreement shall be considered as an employer under this Agreement for the purpose of paying the contributions mentioned in this Article on its employees.

4. (a) In the event that the Employer does not make contributions to the Fund as provided for herein, the Employer agrees that he will be charged with all necessary litigation and accounting expenses incurred by the trustees of the Fund in collecting the monies due hereunder and that a money judgment may be rendered against such employer for such litigation and accounting expenses in addition to a judgment for unpaid contributions.

(b) Litigation and accounting expenses shall be determined so as not to be in excess of the minimum fee schedules for the legal and accounting professions in the area in which such work is performed.

5. (a) 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 location of job of each employee performing work covered by this Agreement.

(b) Subcontractors covered by Article XIII, Section 3 shall remit contributions on a weekly basis.

(c) In the event that no workers are employed during a report period, a negative report and/or a final report shall be filed.

(d) Monthly reports are due the 15th day of the month following the month on which contributions are being made.

6. The books and records of each employer pertinent to the employment of employees covered by this Agreement, shall be made available at all reasonable times for inspection and audit by a licensed CPA employed by the Fund, including, without limitation, payroll sheets, W-2 Forms, New York State employment reports, Social Security reports, ledgers, vouchers and any other pertinent items concerning payrolls. Inspection shall be restricted to a verification of payments made and/or due to the Fund. Cost of such inspection shall be borne by the Fund except in cases where an employer is delinquent in making contributions, in which case the delinquent employer shall bear the cost of inspection and audit.

ARTICLE XVI Carryover

1. There shall be a twelve (12) month carryover from the bid date, of the posted proposal wage rates, for all work bid on or after June 1, 2001. However,

if the project documents contain multi-year wage rate schedules, the Employer shall be obligated to pay the wage rates therein as they become effective.

2. It is understood and agreed that the carryover clause contained in the 1991-1994 Agreement between the parties applies.

ARTICLE XVII Watchmen & Guards

1. Guards are to be excluded from the bargaining unit. Guards may be used for the security of the contractors' equipment and material only and they will not at any time be required to punch time clocks or perform work of employees covered by this Agreement.

2. When watchmen service is subcontracted, the provisions of this Article shall apply equally to such subcontractors.

3. The 2-4-8 clause of this contract (Article X) does not apply to watchmen. The hourly rate shall be paid at straight time for actual hours worked without regard to the day of the week or whether a holiday is involved. Time and one-half (1½) shall be paid for hours worked in excess of forty (40). Overtime for watchmen shall be computed only on hours worked as a watchman without regard to hours that such man shall have worked on the project as a Laborer.

4. The duties of a Watchman shall include maintenance of barricades, lights and signs, and similar non-productive maintenance and safety functions, acting as fire watch but shall not tend the fuel fires.

5. Watchmen Rates: The Watchman's rate shall be 75% of the basic (a) rate, plus fringes. Such basic

rates shall be rounded to the nearest one-half (½) cent.

6. The Employer shall furnish adequate transportation with heaters for all Watchman required requisite for the purpose of performing their work. Watchmen shall not be replaced without the consent of the Union. When Watchmen agree to use their own transportation, they shall be paid at the rate of twenty-five (\$.25) cents per mile for each round trip, for the mileage incurred to perform their work on the job. Employer shall also furnish any additional insurance on the Employee vehicle when required.

ARTICLE XVIII Arbitration

1. During the term of this Agreement, neither party shall order or permit any lockout, strike, or other work stoppage or slowdown. Further, the Union will not aid, support or permit unauthorized strikes, slowdowns or work stoppages by its members.

2. Grievance Procedure: All grievances or disputes involving any controversy, dispute or misunderstanding arising as to the meaning, application or observance of any provisions of this Agreement shall be handled in the manner hereinafter set forth. It is agreed that all matters pertaining to the interpretation of this Agreement must be referred directly to the Joint Committee provided that if a grievance has not been filed the matter shall not be a subject of arbitration until a grievance is filed.

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 Employee's

Shop Steward or another authorized representative of the Union shall first submit a written grievance to the Job Superintendent, or his duly authorized representative. The Shop Steward or another authorized representative of the Union of the Employee or the Employees involved shall be present at any meeting between the Job Superintendent and such employee or employees. The Job Superintendent or his duly authorized representative must make a written disposition of the matter within twenty-four (24) hours after the submission of such written grievance thereto.

Step 2. If the disposition of the matter by the Job Superintendent or his duly authorized representative is not satisfactory, the matter must be taken up by the Business Agent, and representative of the Employer with authority to act within forty-eight (48) hours of the written disposition set forth in Step 1.

Step 3. If the disposition of the matter in Step 2 is not satisfactory, either party has a right to file its grievance with the Joint Committee referred to in Section 2 of this Article within seventy-two (72) hours after Step 2.

3. The Unions and the several employers who are signatories to this shall together establish for the duration of this Agreement, a Joint Committee to be known as "New York State Heavy and Highway Construction Joint Committee." The Joint Committee shall consist of three (3) representatives of the Employers and three representatives of the Union. All meetings of the Joint Committee must be attended by each member or his alternate, but the absence of any member or alternate shall not invalidate the action of the members of the Joint Committee who are present.

It shall be the function of the Joint Committee to settle disputes and grievances which cannot be settled in accordance with Steps 1, 2 and 3 of the grievance procedure. The Joint Committee shall meet monthly and shall formulate rules of procedure to govern the conduct of its proceedings including the time, date and place of meeting.

A decision by a majority of the Joint Committee shall be final and binding on the parties and employees involved. Failure of either party involved to comply with any final decision of or to submit to the jurisdiction of the Joint Committee shall give the other party the immediate right to all legal and economic recourse.

4. Rights of the Joint Committee: The New York State Heavy and Highway Construction Joint Committee shall have the right to investigate all facts pertaining to the dispute. The Joint Committee as well as the Local Unions' Business Agents and/or Steward, shall, upon each dispute or grievance processed in accordance with this Article after completion of or as a part of Step 2, have the right to examine time sheets and any other records pertaining to the computation of compensation of any individual or individuals whose pay is in dispute. Both parties shall be entitled to present such evidence and witnesses in support of their position as they see fit.

5. Arbitration: If a grievance cannot be satisfactorily settled by a majority decision of the Joint Committee, the grievant shall request a list of seven (7) arbitrators from (1) the panel arbitrators of the New York Board of Mediation; (2) the Federal Mediation and Conciliation Service or (3) the labor panel of the American Arbitration Association for final and binding decision. Such request shall be no later than fifteen (15) calendar days from the date

of the oral announcement of the Joint Committee's decision, by the grievant or his duly assigned representative. Further, any arbitration agency named shall be used only for every third arbitration that may arise between the parties to the end that arbitrators be selected on a rotating basis in the order in which the agencies are herein above listed. The arbitrator shall be selected by alternately eliminating names from the seven (7) man list until one remains, the grievant or his representative shall strike the first name. Upon failure to comply with the provisions of this entire section on the part of the grievant, the grievance shall be deemed to have been closed without decision.

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 or to add new 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. In such a case, the costs, if any, shall be borne by the grievant.

6. Violations concerning wages, hours, and all fringe benefit payments shall not be subject to the grievance procedure. In such cases, the Union shall give three (3) working days notice to the Employer that the Union will withdraw its men from the Employer's service. If the Employer contends there is a question of fact regarding the alleged violation, he may file a grievance within the aforesaid three (3) working days with a copy to the Local Union and a copy to the Co-Secretaries of the Committee. When a grievance has been filed, there shall be no work stoppage pending resolution of the grievance pursuant to Article XVIII (2) (3) and subsequent

provisions of this Article. Work jurisdiction, that is, disputes with respect to whether one group of employees or another group of employees, shall perform certain work on the project is expressly not arbitrable under this contract.

7. Any discharged employee may file a grievance no later than four (4) days after discharge by a written notice submitted to the Project Manager or Superintendent and the Local Union and such grievance shall be immediately processed in accordance with the steps of the grievance procedure.

8. The administrative costs of the Joint Committee shall be borne equally by the signatory employer and the Union.

9. 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, except, however, that each party shall pay 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' principal 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.

10. The Union and the employer expressly agree that the Contractors, present and future, who comprise the multi- employer bargaining group, do not subscribe to, are not a part of, nor are they to any extent bound by the Impartial Board for the Settlement of Jurisdictional Disputes or the rules, regulations or procedures of the Impartial Board for the Settlement of Jurisdictional Disputes.

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 XXIV 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 or 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 obligation 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 not been furnished, the gross basic wage rate appearing hereafter at Article XXIV shall be paid to the Employee on a straight and/or time and one-half basis as shall be applicable under this contract.

6. Deductions 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 by the Company in reliance upon authorization cards furnished by the Employees and/or Union.

ARTICLE XX Apprenticeship

1. A registered apprenticeship program for LIUNA Local 435 has been established that fully complies with all governmental requirements, indenturing apprentices to the program.

2. LIUNA Local 435's apprenticeship program is controlled by an existing Joint Training Committee (JTC) consisting of equal representation appointed as under the existing trust agreement's which will administer the rules and regulations for the apprenticeship program.

3. The ratio of apprentice to journeymen on any project site is one (1) apprentice to three (3) journeymen 1:3. Apprentices shall be covered by the terms and conditions of this Agreement and shall be paid according to the following schedule of wages and fringe benefits:

For work let on or after June 1, 2002 or work on which the carryover clause has expired.

(a) 0-1000 hours, \$16.51 plus Welfare, Training and LECET. Work assessment and PAC deductions apply.

(b) 1001-2000 hours, \$20.00 plus Welfare, Training and LECET. Work assessment and PAC deductions apply.

(c) 2001-3000 hours, \$21.49 plus Welfare, Training, Annuity and LECET. Work assessment and PAC deductions apply.

(d) 3001-4000 hours, \$22.95 plus 100% of the fringe benefit schedule. Work assessment and PAC deductions apply.

4. All wage increases are subject to an apprentice completing the preceding 1000 hour increment.

5. Apprentice applicants are required to have a substance abuse test and physical prior to acceptance into the program or union. The Welfare Fund or Training Fund will pay the cost of such testing. The Training Fund shall coordinate related administration.

ARTICLE XXI

Equal Employment Opportunity

1. The Employer and the Union mutually agree that they will comply and cooperate with all laws, codes, rules, regulations, executive orders and administrative decisions, whether State or Federal, dealing with nondiscrimination in training, membership, employment, job tenure, promotions and every other matter covered by such laws, codes, etc. not herein expressly mentioned.

ARTICLE XXII

Most Favorite Nation

1. If the Union enters into any agreement with any individual employer or group of employers performing work covered by the terms of this Agreement and that Agreement provides for more favorable wages, hours, or conditions to any other Employer, the Employers signatory hereto, after sending written notice of such intention, shall be afforded the privilege to adopt such advantageous terms and conditions.

2. This clause shall not apply to isolated or emergency situations which may occur from time to time under regular conditions, nor shall this clause apply to any project agreement that is put in place before the bid.

3. On private work where there is no prevailing wage, conditions for the project may be different than those addressed by this Agreement. Therefore, a pre-bid conference shall be held, attended by the signatories to this agreement to discuss such project conditions and their consequences.

Should such project conditions and circumstances require an extension and/or modification of this agreement, and meet with the acceptance of both parties to this agreement, they shall be reduced to writing for said project.

ARTICLE XXIII

Savings Clause

1. In the event that any State or Federal Statute or Law shall supersede or invalidate any clauses in this Agreement, such Statute or law shall prevail over any such clause; however, the other provisions of this Agreement shall be valid and remain in full force and effect. In the event that any section or portion thereof shall be declared invalid, it is further agreed that the parties hereto shall meet within a period of sixty (60) days to redraft a new section or portion thereof, which shall be valid and which shall replace that section or portion thereof declared invalid.

ARTICLE XXIV

Wages

1. A Laborer shall be paid for the entire day at the rate applicable to the highest classification in which he has worked that day.

2. Whenever the letters a, b and c appear hereinafter, the use of the letter shall be considered as describing the following work classification:

(a) General Labor Rate Classification: Change-house Men.

(b) Intermediate Rate Classification: Miners and all Machine Men, Safety Miner, all Shaftwork, Caisson work, Drilling, Blow Pipe, all Air Tools, Tugger, Scaling, Nipper, Guniting pot to nozzle, Bit Grinder, Signal Man (top and bottom), *Concrete Men, Shield driven tunnels, mixed face and soft ground, liner plate tunnels in free air.

(c) Foremen Rate Classification: Track Foreman, Concrete Foreman, Shift Foreman, Blaster, Heading Foreman (Grout and Iron).

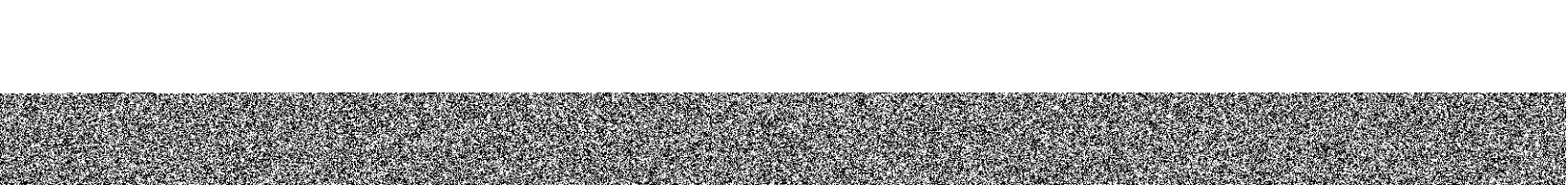
Classifications and rates not covered by this Agreement will be subject to negotiations between the Company and the Union.

(d) HAZARDOUS WASTE. 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.

3. Wage rates, Welfare, Pension, S.U.B. Annuity and Training contributions and deduction amounts are as set forth below.

NOTE: The basic wage rate appearing below includes the amount to be deducted for each actual hour worked for DUES and/or PAF.

**The work of concrete men shall include the handling of any aggregate and concrete material of any kind.*



Name of Firm

By: _____
An Authorized Officer, Title

Firm Street Address

City and State

Telephone Number

Local Union: _____

By: _____
Authorized Representative

Date: _____

UNION COPY