

2007 - 2010

HAZARDOUS WASTE ABATEMENT AGREEMENT

between

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA,  
MICHIGAN CHAPTER, INC.

and

LOCAL UNION 324, 324-A, 324-B, 324-C

of the

INTERNATIONAL UNION OF OPERATING ENGINEERS

AFL-CIO

MICHIGAN

OPERATING ENGINEERS AGREEMENT  
HAZARDOUS WASTE ABATEMENT

INDEX

Section 1.	Intent and Purpose	1
Section 2.	Recognition	1
Section 3.	Scope of Agreement	2
Section 4.	Management Rights	3
Section 5.	Notification	3
Section 6.	Pre-job Conference	4
Section 7.	Union Representative	4
Section 8.	Jobsite Access	4
Section 9.	Employment	5
Section 10.	Equal Employment	6
Section 11.	Union Security	6
Section 12.	General Principles	7
Section 13.	Employee Duties	7
Section 14.	Steward	8
Section 15.	Craft Foreman	8
Section 16.	Apprentices	9
Section 17.	Stationary Equipment	10
Section 18.	Safety	11
Section 19.	Substance Abuse	11
Section 20.	Medical Examinations	13
Section 21.	Injury	13
Section 22.	Hours	14
Section 23.	Lunch Period	15
Section 24.	Personal Relief Time	15
Section 25.	Equipment Preparation Time	15
Section 26.	Premium Time	16
Section 27.	Holidays	16
Section 28.	Optional 4-10 Workweek	17
Section 29.	Wages and Fringe Benefit Contributions	17
Section 30.	Fringe Benefit Contributions	18
Section 31.	Security Deposit Fund	20

## Index - Continued

Section 32.	Pay Day	22
Section 33.	Transportation	24
Section 34.	Travel	24
Section 35.	Reporting Time	24
Section 36.	New Equipment	24
Section 37.	Subcontracting	25
Section 38.	Jobsite Repairs	25
Section 39.	Change House and Tools	25
Section 40.	Parking	26
Section 41.	Joint Grievance Board	26
Section 42.	Jurisdictional Disputes	28
Section 43.	No Strike - No Lockout	28
Section 44.	Liability	29
Section 45.	Owner-Operator	29
Section 46.	Michigan Employment Security Commission (MESC) And Workers' Compensation Coverge	30
Section 47.	Equal Treatment	30
Section 48.	Market Recovery	30
Section 49.	Savings Clause	30
Section 50.	Termination	31
	Appendix A	40
	Drug /Alcohol Testing Procedure	

## OPERATING ENGINEERS AGREEMENT HAZARDOUS WASTE ABATEMENT

This Agreement is entered into this 1st day of October, 2007 between the Associated General Contractors of America, Michigan Chapter, Inc., hereinafter called the "Association," representing its members, who are hereinafter called "Employer," and the International Union of Operating Engineers Local 324, 324-A, 324-B and 324-C, AFL-CIO, hereinafter called the "Union," which has jurisdiction in all counties in the State of Michigan.

### **Section 1. INTENT AND PURPOSE**

(a) The intent of the parties to this Agreement is to promote and improve the industrial and economic relationship between the Employer, the Union and the employees and to set forth herein the rates of pay, hours of work, and all other conditions of employment to be observed by the parties hereto. The Agreement shall cover and be applicable to the jobsite where work described in Section 3, "Scope of Agreement" is performed. The geographic territory governed by this Agreement consists of the entire territory in which the Union has geographic jurisdiction.

(b) This Agreement represents the entire understanding between the parties. No oral or written rule, regulation or understanding which is not contained in this Agreement will be of any force or effect upon the parties.

### **Section 2. RECOGNITION**

(a) The Employer recognizes the Union as the sole and exclusive collective bargaining agent for all employees, as defined below, for the purpose of collective bargaining with respect to rates of pay, hours of work, and other conditions of employment. The term "employee(s)" used herein means all employees engaged in the jobsite operation, maintenance, repair, assembly, disassembly and decontamination of power machinery and equipment as set forth in Section 29 (c) and performing work within Section 3, "Scope of Agreement." This work jurisdiction is founded in and subject to decisions of record and trade agreements.

(b) The Union recognizes the Association as the sole and exclusive collective bargaining agent for the Association's members.

### **Section 3. SCOPE OF AGREEMENT**

(a) The scope of this Agreement shall encompass the remedial performance, physical removal and/or abatement of hazardous/toxic substances including asbestos and radioactive material, such as described in the following laws and regulations, as amended, and any other present and future laws and regulations relating to the above-described work:

Superfund Amendments and Reauthorization Act of 1986 (SARA);  
Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA);  
The Resource Conservation and Recovery Act of 1976 (RCRA);  
Hazardous Waste Operations and Emergency Response  
Regulations, Title 29, Part 1910.120 of the Code of  
Federal Regulations;  
The Michigan Environmental Response Act of 1982;  
The Michigan Hazardous Waste Management Act of 1979; and,  
The Michigan Water Resources Commissions Act of 1929.

(b) This Agreement shall not apply to work performed at the site of any power generating station located within the geographic jurisdiction of the Union. The Employer agrees that in the event he is awarded such work during the term of this Agreement he will notify the Union of such award within five (5) days and offer to meet to negotiate an agreement covering the work to be performed.

(c) This Agreement shall not apply to work performed in conjunction with Boilermakers, Electricians, Glaziers, Millwrights, Pipefitters, Plumbers, Riggers, Sheet Metal Workers or Structural Iron Workers. The Employer agrees that in the event he is awarded work covered by this Agreement during the term of this Agreement in conjunction with any of the aforementioned trades, he will notify the Union of such award within five (5) days and offer to meet to negotiate an agreement covering the work to be performed.

## **Section 4. MANAGEMENT RIGHTS**

(a) The Employer shall retain and exercise full and exclusive authority and responsibility for the management of its operations. These rights include, but are not limited to, the right to:

1. Plan, direct and control the operations of all work.
2. Hire, discharge, suspend, discipline, promote and lay off employees as deemed appropriate to satisfy work and/or skill requirements.
3. Require all employees to observe job rules, security requirements and safety regulations.
4. Utilize any work methods, procedures or techniques and select and use any types or kinds of materials, apparatus, machinery or equipment regardless of source or manufacturer provided safety requirements are met.
5. Assign and schedule work at its discretion, and determine when overtime will be worked.
6. It is a management right and responsibility to determine the Level of Protection (A, B, C or D) at which work will be performed; however, the Employer agrees that upon request the reasoning and supporting data underlying the decision will be explained to the Union Representative.

The foregoing enumeration of management rights shall not be deemed to exclude other functions not specifically set forth. The Employer retains all management rights not specifically limited by the terms of this Agreement.

## **Section 5. NOTIFICATION**

(a) The Employer shall notify the Union prior to the start of a new project of any work to be performed by the Employer within the scope of this Agreement.

(b) Upon request of the Union, an Employer covered by this Agreement shall be required to furnish the Union its M.E.S.C. Registration Number. In addition, upon request of the Union, the Employer shall furnish the Union with proof of Workers' Compensation Insurance coverage.

## **Section 6. PREJOB CONFERENCE**

(a) Upon request of the Employer or the Union, a prejob conference shall be held within seven (7) days of the request, excluding Saturday, Sunday and holidays. At the prejob conference, the Employer shall advise the Union of the starting date, length of job, approximate number of shifts and hours to be worked, machinery/equipment to be used, and trade work assignments. At the request of the Employer or the Union, other trades expected to perform work at the jobsite will be invited to participate in the prejob conference.

(b) If requested by either party, the understandings reached at the prejob conference shall be reduced to writing and signed by the Employer and the Union. The applicability of such understandings is limited to the Employer's work at the jobsite at issue and shall have no effect on the Employer's other jobsites or on the jobs of other Employers. The understandings are not be considered amendments to this Agreement.

(c) If the Employer refuses to participate in a prejob conference, the Union has the right to withhold the services of its members until a prejob conference is held.

## **Section 7. UNION REPRESENTATIVE**

(a) The Union shall select a Business Representative who is an employee of the Union, hereinafter referred to as the "Union Representative," who shall be the designated representative with whom the Employer shall confer on all matters pertaining to this Agreement.

## **Section 8. JOBSITE ACCESS**

(a) The Union Representative, and other representatives of the Union, shall have access to the jobsites of the Employer during working hours provided they do not unnecessarily interfere with the work of employees and further provided that such representatives comply with visitor and security rules of the project. Union

representatives must notify the Employer's designated jobsite representative upon arrival. Arrangements will be made to have appropriate passes prepared for Union representatives.

## **Section 9. EMPLOYMENT**

(a) Due to the nature of the work covered by this Agreement, it is necessary that the Employer have available experienced, certified and qualified employees. Upon request of the Employer, the Union agrees to furnish such competent workers.

1. As a condition of employment, each employee shall be previously trained and qualified to work on hazardous substance jobsites as governed by applicable local, state and federal law.

2. As a condition of employment, each employee shall successfully pass a preemployment physical examination including a preemployment drug and alcohol screening test. The cost shall be paid by the Employer. The drug and alcohol testing procedure contained in Appendix A shall be followed by all Employers in administering the test. Appendix A is hereby incorporated into this Agreement by reference.

(b) Beyond the Employer's regular employees, the Employer agrees to give the Union an opportunity to supply applicants for employment. Upon receiving a request for an applicant, the Union agrees to exercise diligence in locating an applicant with the requisite skills within forty-eight (48) hours.

(c) A "regular employee" is defined as one who is presently on the Employer's payroll at any location, who has been laid off from the company and is currently collecting unemployment insurance, or who has been on the Employer's payroll within the geographic jurisdiction of the Union within the past six (6) months.

(d) The number of employees to be employed and the work assignments of such employees are to be determined by the Employer.

(e) The Employer agrees to indemnify and hold the Union harmless from all claims, suits or causes of action arising from his administration of the provisions of Section 9 (a) (2), except those resulting from the Union's negligent or intentional

conduct. Such indemnity shall include payment of costs, attorney fees, judgments, damage awards and settlements.

## **Section 10. EQUAL EMPLOYMENT**

(a) The Employer and the Union acknowledge that they are subject to applicable laws regarding equal employment opportunity and fair employment practices and agree that they shall cooperate in taking necessary steps to comply with such laws and lawful regulations thereunder.

## **Section 11. UNION SECURITY**

(a) The Employer agrees that in the employment of workers to perform the various classifications of work required under this Agreement, he will not discriminate against applicants because of membership or nonmembership in the Union. Each employee shall, as a condition of employment, become and remain a member of the Union for the term of his employment after the seventh (7th) calendar day of his employment by any Employer who is party to this Agreement, or the effective date of this Agreement, whichever is later. It is agreed that "membership in good standing" shall mean only the payment of those periodic dues and fees germane to collective bargaining contract administration and grievance adjustment.

(b) The Employer shall not be obligated hereunder to discharge or discriminate against any employee for nonmember ship in the Union:

1. If he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members; or,
2. If he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

(c) The Employer shall be furnished with a notice in writing by the Union, signed by the proper officer, and setting forth that the employee has refused to join the Union, although he has been offered membership on the same terms as other members; or that the employee's membership in the Union has been terminated; or that the employee is not a member in good standing for reason of nonpayment of regular dues, working dues, service fees, or regular initiation fees, and that the Union requests that said employee be discharged for one of these above reasons. In the event the

Employer is requested to terminate an employee because he is not a member in good standing as set forth in the preceding sentence, the Union shall furnish the Employer and the employee with a notice stating the amount of dues or fees owed, the time period for which the amount is owed, the method used to calculate the delinquency, and the last day on which the employee must pay the amount due.

(d) The Union agrees that it will indemnify and hold the Employer harmless from any and all claims, suits, or causes of action, arising from the administration of the provisions of this Section and such indemnity shall include the payment of costs, attorneys' fees, judgments, damage awards, and settlements on behalf of the beneficiaries of such indemnity.

## **Section 12. GENERAL PRINCIPLES**

(a) There shall be no limit on production by employees nor restrictions on the full use of tools or equipment. There shall be no restriction, other than may be required by safety regulations, on the number of employees assigned to any crew or to any service. There shall be no restriction on the amount or number of machines or equipment to which an employee may be assigned.

(b) Practices not included or specifically set forth in the terms and conditions of this Agreement shall not be recognized.

(c) This Agreement shall be binding only on the parties signatory hereto.

## **Section 13. EMPLOYEE DUTIES**

(a) No employee shall quit or leave the job until he has given as much notice to the Employer as is practicable under the circumstances, unless he is ordered to leave by the Employer. This is intended to protect the Employer against being without an Engineer and shall not be construed in any way as restricting the customary rights of an Employer to discharge an employee.

(b) In the event an employee quits, is discharged, or is laid off, he shall return any safety equipment, tools or greasing equipment furnished by the Employer.

(c) In the event an employee does not comply with the provisions contained herein, the Employer shall report the employee to the Union and the Union shall take appropriate action.

#### **Section 14. STEWARD**

(a) The Employer recognizes the sole right of the Union to appoint a working Steward from among the members of the Union working at the jobsite.

(b) The Steward's activities shall be confined to the area in which work is performed by his Employer, and to the members of the Union employed by the Employer. The Steward shall be permitted sufficient time to perform his steward duties, provided such does not interfere with scheduled work. The selection of a Steward shall not increase the number of employees necessary to man the job, as determined by the Employer. The Employer shall be given the name of the Steward in writing.

(c) The Steward shall not receive any extra compensation above his regular wages due to his position as Steward. A Steward shall be required to do a full day's work and shall be subject to discharge as any other employee. However, the Employer agrees not to lay-off, discharge or transfer the Steward off the job until he has notified the Union. The Steward has no authority to take strike action or any other action interrupting the Employer's business.

(d) When a job is reactivated after having been temporarily shut down, the Steward shall be among the first two employees recalled, as determined by the Employer, provided the Steward is capable and qualified to perform the required work.

(e) When employees are to be laid off, the Steward shall be one of the last two employees laid off, as determined by the Employer, provided he is capable and qualified to perform the required work.

#### **Section 15. CRAFT FOREMAN**

(a) The selection of the Craft Foreman shall be entirely the responsibility of the Employer. Whenever there are seven (7) or more Engineers employed by one Employer per shift on any one job, the Employer shall employ an additional Engineer as a Craft Foreman, who shall be a representative of the Employer.

(b) The Craft Foreman shall be the supervisor in charge of Engineers and shall be in charge of maintenance and repairs of all equipment and machinery on the job for his Employer within the jurisdiction of the Union. The Craft Foreman's duties include the assignment of equipment and Engineers; procurement of parts, fuel and equipment; keeping the time log of Engineers; and supervision of all other operations pertinent to the trade. In addition, the Craft Foreman may operate equipment during an employee's personal relief time to minimize the impact of personal relief time on the progress of the job.

(c) The Base Wage paid to the Craft Foreman shall be at least two dollars (\$2.00) per hour more than the highest paid Engineer working on the job for the Employer.

## **Section 16. APPRENTICES**

(a) The parties agree that it is in their mutual interest to train new employees in the work covered by this Agreement. The number of Apprentices employed by an Employer on a single job shall be determined by mutual agreement at the prejob conference based on the nature of the work at the jobsite; however, the ratio of apprentices to journey worker shall be in accordance to the collective bargaining agreement.

January 1, 2008

Current ratio for Operators is:

1. More than 5, up to and including 10 journey workers, 1 apprentice.
2. More than 10, up to and including 20 journey workers, 2 apprentices.
3. More than 20, up to and including 30 journey workers, 3 apprentices.
4. Thereafter, apprentices are to be employed on the same ratio.

The apprentice ratio shall be based on the total number of employees in the Operating Engineer bargaining unit working for the employer and shall not be based on the number of employees working on a project or a job site. The Apprentice Engineer shall be assigned to work with the various Engineers and to do other work as directed by the Contractor.

(b) The parties agree to abide by the rules, regulations and procedures established by the Operating Engineers Local 324 Joint Apprenticeship Training Committee (JATC) relating to selection, employment, training, and discipline of Apprentices. The Employer agrees to pay the Apprentice one day's pay (eight hours at straight time)

every two weeks when the Apprentice is attending class. The Employer is not obligated to make such payment until the Apprentice presents a class attendance record signed by the JATC instructor.

(c) In the event of a scheduled leave of an Apprentice approved by the JATC, the Employer will accept a replacement Apprentice assigned to the job by the JATC. In the event of illness or injury, a replacement shall be assigned by the JATC after the fifth working day.

## **Section 17. STATIONARY EQUIPMENT**

(a) The maintenance, servicing and starting/stopping of stationary power-driven equipment, such as welding machines, generators, pumps, and compressors or group of compressors under 600 cfm is within the jurisdiction of the Union.

1. Whenever three (3) or fewer pieces of such equipment, regardless of capacity or size, are used at the jobsite, such work shall be performed by the Engineers presently working on the jobsite in addition to his regular duties.
2. Whenever four to six (4-6) pieces of such equipment, regardless of capacity or size, are used at the jobsite, the Employer shall employ an Engineer, who shall be called the Utility Engineer, to perform maintenance, servicing and starting/stopping of such equipment.
3. Whenever seven to ten (7-10) pieces of such equipment, regardless of capacity or size, are used at the jobsite, the Employer shall employ a second Utility Engineer.
4. Whenever eleven (11) or more pieces of such equipment, regardless of capacity or size, are used at the jobsite, the Employer shall employ a third Utility Engineer.

(b) The maintenance, servicing and starting/stopping of a compressor or group of compressors 600 cfm and over is within the jurisdiction of the Union.

1. Whenever a compressor or group of compressors 600 cfm or over is used on the jobsite, the Employer shall employ an Engineer, who shall be called the Utility Engineer, to perform maintenance, servicing and starting/stopping of such equipment.

(c) To minimize interruption of the progress of the job, in addition to the maintenance, servicing and starting/stopping of stationary power-driven equipment, at the Employer's request the Utility Engineer also will operate all other machinery/equipment within the jurisdiction of the Union during an unexpected, unscheduled absence of an Engineer from the job not to exceed two (2) days, during personal relief time of Engineers, and during an Engineer's absence due to a periodic medical examination.

(d) An Engineer shall not be required on a concrete mixer of less than one-half (1/2) cubic yard capacity; equipment driven by motors of under five (5) horsepower; a boiler of fifteen (15) pounds pressure or under; or, a compressor of any capacity used up to one day.

## **Section 18. SAFETY**

(a) The Employer and its employees shall comply with all applicable federal, state and local laws, ordinances and regulations relating to job safety, health and safe work practices, as well as those specific project safety rules established by the Employer.

(b) Employees shall use diligent care to perform their work in a safe manner and to protect themselves and the property of the Employer. Employees shall keep the machines and equipment which they operate in good working order at all times to the extent of their ability.

(c) The Union and the Employer agree to cooperate in settling safety issues and problems promptly and to encourage the resolution of such issues and problems at the local level.

## **Section 19. SUBSTANCE ABUSE**

(a) In the interest of the safety and well-being of employees covered by this Agreement, the use, possession, distribution, dispensation, transporting or manufacture of illegal drugs and of intoxicating beverages is prohibited at the worksite, on the Employer's premises, or on the Employer's time and subjects the employee to discharge.

(b) The Employer has the right to require the employee to submit to additional drug and alcohol screening tests whenever he has reasonable suspicion to believe the employee is reporting for work under the influence of drugs or alcohol, is impaired from performing work because of drug or alcohol usage, or is using drugs or alcohol during the workday.

1. Reasonable suspicion shall be based on the occurrence of an on-the-job accident or on another reasonable objective basis for believing the employee might be under the influence of drugs or alcohol. A reasonable objective basis shall be defined as a firsthand observation of the employee's job performance made by two (2) management representatives who have documented in writing conduct that they believe to be symptomatic of drug or alcohol impairment.

(c) All employees may be tested for drugs and/or alcohol on a random basis not more than twice annually. A truly random selection method, such as by appropriate computer program, must be used to identify the employees to be tested.

(d) The Employer may require an employee who is involved in an accident causing personal injury or damage to equipment to be tested for drugs and/or alcohol.

(e) The drug/alcohol testing procedure contained in Appendix A shall be followed by all Employers. Appropriate medical tests include a blood and/or urine test. Refusal to submit to a urine or blood test, or a positive test result, shall subject the employee to discharge.

(f) The Employer shall allow each employee access to the results of each of his drug/alcohol screening tests; and further, shall maintain these records as required by applicable state and/or federal law. Upon the written request of an employee, the Employer shall furnish a copy of his medical records to said employee.

(g) The Employer agrees to indemnify and hold the Union harmless from all claims, suits or causes of action arising from his administration of the provisions of this Section, except those resulting from the Union's negligent or intentional conduct. Such indemnity shall include payment of costs, attorney fees, judgments, damage awards and settlements.

(h) Employees referred to a jobsite where the MUST Safety & Drug Testing Program certification is required by the project owner employing the Contractor must demonstrate they have the requisite MUST Safety & Drug Testing Program

certification. Employees may be tested for drugs and/or alcohol in those instances when testing is required by the owner employing the Contractor, or by pertinent government regulation; provided, however, that any such testing shall be conducted in accordance with the MUST Drug & Alcohol Screening Program.

## **Section 20. MEDICAL EXAMINATIONS**

(a) The Employer has the right to require the employee to submit to additional drug and alcohol screening tests in conjunction with an employee's periodic medical examination. When the Employer so requires, the employee must be given at least twenty-four (24) hours notice.

(b) The drug/alcohol testing procedure contained in Appendix A shall be followed by all Employers. Appropriate medical tests include a blood and/or urine test. Refusal to submit to a urine or blood test, or a positive test result, shall subject the employee to discharge.

(c) The Employer shall allow each employee access to the results of each of his drug/alcohol screening tests; and further, shall maintain these records as required by applicable state and/or federal law. Upon the written request of an employee, the Employer shall furnish a copy of his medical records to said employee.

(d) The Employer agrees to indemnify and hold the Union harmless from all claims, suits or causes of action arising from his administration of the provisions of this Section, except those resulting from the Union's negligent or intentional conduct. Such indemnity shall include payment of costs, attorney fees, judgments, damage awards and settlements.

## **Section 21. INJURY**

(a) Whenever an employee is injured on the job so as to require prompt offsite medical attention, the Employer shall provide transportation for the employee to a medical facility. If the employee is able to complete his shift after receiving medical attention, he shall do so and receive payment for the full shift. If the injury prevents the employee from returning to the jobsite, he shall be paid for the remainder of his normal shift on that day at the appropriate shift rate. The Employer shall provide for an injured employee's transportation from the medical facility to his automobile, to the jobsite, or to his home as may be appropriate under the circumstances.

(b) If subsequent visits are required to the company doctor, the appointments will be made after regular working hours, whenever possible. If through no fault of the employee, the company doctor requires that an appointment be made during the regular working hours, the employee will be paid for the time needed for the appointment. If the employee voluntarily makes an appointment to see the company doctor during working hours when the appointment could have been made after working hours, he may do so and will not be paid for any loss of time.

(c) If the employee makes subsequent visits to his own doctor rather than to the company doctor, it will be on his own time.

## **Section 22. HOURS**

(a) Eight (8) hours shall constitute a day's work, Monday through Friday. Due to the nature of work covered by this Agreement, the Employer shall establish the starting and quitting time of all shift(s) and notify the Union. This Section shall not be construed as guaranteeing any particular number of work hours, or as limiting the Employer's right to schedule work.

(b) When only one (1) shift is worked, it shall be paid at the first shift rate of wages in accordance with the schedule in Section 29 and shall work eight (8) hours before overtime applies. A single shift worked any time within the twenty-four hour day may be designated as the first shift and be paid the first shift rate of wages.

(c) When a second shift in addition to a first shift is worked, the second shift shall be paid in accordance with the schedule in Section 29 and both shifts shall work eight (8) hours before overtime applies.

(d) When three (3) shifts are worked, the first shift shall work eight (8) hours, the second shift shall work seven and one-half (7-1/2) hours, and the third shift shall work seven (7) hours before overtime applies. The third shift shall be paid in accordance with the schedule in Section 29.

(e) When an entire second and/or third shift is worked and the length of the shift(s) is less than eight (8) hours, a full eight (8) hours of fringe benefit contributions nonetheless shall be paid for such employees so that a minimum of a full first shift's

fringe benefit contributions are paid. Shifts may be worked for one day or any number of days.

**Section 23. LUNCH PERIOD**

(a) An employee shall receive an unpaid one-half (1/2) hour lunch period. An employee wearing personal protective equipment shall be allowed to change on company time. Each employee shall begin his one-half hour lunch period at the Employer's direction during the ninety (90) minute window beginning at the midpoint of the fourth (4th) hour of work and ending at the start of the sixth (6th) hour of work.

The Union and the Employer recommend that employees remain on the jobsite during lunch time by bringing his lunch or by obtaining food from a lunch wagon. The Employer will make an effort to obtain the services of a lunch wagon.

(b) No employee shall be required to work more than five (5) hours without beginning his lunch period.

(c) If an employee is to work more than eleven (11) hours, he shall be given a one-half (1/2) hour meal period on company time at the beginning of the eleventh (11th) hour.

**Section 24. PERSONAL RELIEF TIME**

(a) Due to the nature of the work covered by this Agreement, the employee shall be allowed to take personal relief time not to exceed ten (10) minutes once during the first half of the shift, and once during the second half of the shift, unless a different relief schedule is needed to reduce body core temperature while under heat conditions or required by MIOSHA regulations. Personal relief time will be taken outside the Exclusion Zone. The Union agrees that this will not be abused. To the extent necessary, personal protective clothing shall be changed on company time. The Employer will determine the time during the shift when relief time will be taken. Relief time will not be taken simultaneously by all employees, unless so directed by the Employer.

**Section 25. EQUIPMENT PREPARATION TIME**

(a) Employees operating cranes, backhoes, dozers, graders, loaders, scrapers and trenchers shall be paid for each shift the equivalent of one (1) hour of straight-time pay per shift to compensate the employee for preparing the equipment for operation at

the shift starting time. Equipment preparation time must be actually worked by the employee.

**Section 26. PREMIUM TIME**

(a) One and one-half the straight-time wage rate shall be paid for all overtime work Monday through Friday.

(b) One and one-half the applicable straight-time wage rate shall be paid for the entire shift when the majority of hours worked on that shift is between 8:00 a.m. Saturday and 8:00 a.m. Sunday. Double the applicable straight-time wage rate shall be paid for the entire shift when the majority of hours worked on that shift is between 8:00 a.m. Sunday and 8:00 a.m. Monday. Double the applicable straight-time wage rate shall be paid for the entire shift when the majority of hours worked on that shift is between 8:00 a.m. on the morning of a holiday recognized in Section 27 and 8:00 a.m. the following morning.

(c) All fringe benefits shall be paid on an hours worked basis, except the Vacation Fund contribution shall be made on an hours paid basis. All fringe benefit contributions shall be made for Reporting Time hours in Section 35 as if the hours actually had been worked. All fringe benefit contributions shall be made for all Equipment Preparation Time hours in Section 25.

(d) An Engineer regularly assigned to a piece of equipment shall be given preference to operate the equipment when it is used during premium time.

(e) Recognizing the peculiarities involved where it is necessary on a continuous basis to maintain well points, deep wells, freeze systems, air pressure and any other forms of dewatering, it is agreed that when the Employer finds it necessary to so maintain these type systems on a seven (7) day a week schedule, then the employees assigned to such systems shall receive time and one-half for Sunday and holiday work; provided, however, that if any other employees covered by this Agreement are assigned to work on Sunday or a holiday on the same jobsite, then the employees maintaining such systems shall also receive double time for such Sunday or holiday.

**Section 27. HOLIDAYS**

(a) The recognized holidays shall be as follows: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day. No work shall be

done on Labor Day except for protection of life or property. If any of the above holidays fall on Sunday, the following Monday shall be considered the holiday and if work is performed on the following Monday the rate of pay shall be double time.

## **Section 28. OPTIONAL 4-10 WORKWEEK**

(a) At the beginning of a job or any time during its duration, and for a minimum of one (1) week, the Employer shall have the option of scheduling work on Monday through Thursday for ten hours each day at straight-time. Work in excess of ten (10) hours each day shall be paid at time and one-half. The 4-10 workweek may be used on a job basis only.

(b) In the event one (1) or more hours of work are unable to be performed for any reason Monday through Thursday, then the Employer may schedule work on Friday as a straight-time make-up day. The Employer may work a maximum of ten (10) hours on Friday at straight-time; however, all work in excess of forty (40) hours for the week shall be paid at time and one-half.

(c) When the Employer elects to use the 4-10 workweek under this Section, he will notify the Union and offer to hold a conference to inform the Union of the work schedule.

(d) On any job scheduled to work a make-up day, the Employer shall not bring employees to the job to avoid the payment of premium time.

(e) When work is performed under this Section, Reporting Time shall be paid in accordance with Section 35, except that five (5) hours shall be substituted for four (4) hours, and ten (10) hours shall be substituted for eight (8) hours.

(f) When work is performed under this Section, pay day shall be on one of the four (4) days worked.

## **Section 29. WAGES AND FRINGE BENEFIT CONTRIBUTIONS**

(a) The gross wage shown in these schedules includes required payments for base wages and for Vacation, Health Care, Pension, Retiree Benefit, Apprentice, Labor-Management Education Committee and Industry Advancement contributions. Failure to pay the base wage and the funded fringe benefit contributions when due is payment

of less than the gross wage and shall constitute a status of delinquency and a violation of this Agreement. The Union shall withhold its members from Employers who are thus in violation. In the event any Employer is delinquent in the payment of wages or any of the required fringe benefit contributions, the Union, after giving the Employer, and the Association, seventy-two (72) hours written notice (excluding Saturday, Sunday and holidays) by certified mail, telegram or personal delivery, of such delinquency, shall have the right to take strike action against such Employer, notwithstanding any other provision of this Agreement.

(b) An Engineer shall be paid for the entire workday at the highest hourly rate he has worked at any time during the workday.

(c) By agreement of the parties, the wage schedules appear at the end of the Agreement for convenience, and are incorporated herein by reference.

(d) In the event a Davis-Bacon or Michigan Prevailing Wage determination is less than the scale of wages and fringe benefit contributions contained in this Agreement, the parties shall meet and establish comparable wage rates and fringe benefit contributions, which will be attached an Appendix to this Agreement.

### **Section 30. FRINGE BENEFIT CONTRIBUTIONS**

(a) Health Care. The Employer shall pay the amount specified in Section 29 for all hours worked by each employee covered by this Agreement to the Operating Engineers Local 324 Health Care Plan. The Health Care contribution is calculated on hours worked.

(b) Pension Fund. The Employer shall pay the amount specified in Section 29 for all hours worked by each employee covered by this Agreement to the Operating Engineers Local 324 Pension Plan. The Pension contribution is calculated on hours worked.

(c) Defined Contribution Plan. The Employer shall pay the amount specified in Section 29 for all hours worked by each employee covered by this Agreement to the Operating Engineers Local 324 Defined Contribution Plan Fund. The Defined Contribution Plan is calculated on hours worked.

(d) Vacation Fund. The Employer shall pay the amount specified in Section 29 for all hours paid by each employee covered by this Agreement to the Operating Engineers Local 324 Vacation and Holiday Trust Fund. The Vacation and Holiday contribution is calculated on hours paid.

(e) Retiree Benefit Fund. The Employer shall pay the amount specified in Section 29 for all hours worked by each employee covered by this Agreement to the Operating Engineers Local 324 Retiree Benefit Fund. The Retiree Benefit Fund contribution is calculated on hours worked.

(f) Apprenticeship Fund. The Employer shall pay the amount specified in Section 29 for all hours worked by each employee covered by this Agreement to the Operating Engineers Local 324 Joint Apprenticeship Training and Journeyman Retraining Fund. The Apprenticeship Fund contribution is calculated on hours worked.

(g) Labor-Management Education Committee. The Employer shall pay the amount specified in Section 29 for all hours worked by each employee covered by this Agreement to the Operating Engineers Local 324 Labor-Management Education Committee. The Labor-Management Education Committee contribution is calculated on hours worked.

(h) Industry Advancement Fund. The Employer shall pay the amount specified in Section 29 for all hours worked by each employee covered by this Agreement to the Industry Advancement Fund of the Association. The Industry Advancement Fund contribution is calculated on hours worked.

(i) The Trust Agreements establishing the Health Care Plan, Pension Fund, Vacation Fund, Retiree Benefit Fund, Apprenticeship Fund, Labor- Management Education Committee and Defined Contribution Plan, amendments thereto, bylaws, rules and regulations of the trustees of the aforesaid funds now in effect or subsequently placed into effect are incorporated into this Agreement by reference. Contributions shall be paid by the fifteenth (15th) day of the month following the month the employee worked, and shall be deposited each month to such depository as may be designated by the Trustees of said Funds.

(j) The Employer agrees to furnish to the Trustees of the various fringe benefit funds provided for in this Agreement, upon request, such information and reports as the Trustees may require in the performance of their duties. The Employer further

agrees that the Trustees, or any agent authorized by the Trustees, shall have the right to enter upon the Employer's premises to perform an audit and to have access to such of the Employer's records as may be necessary to permit the Trustees to determine whether the Employer is complying fully with the provisions of this Agreement regarding payment of wages and fringe benefit contributions.

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

### **Section 31. SECURITY DEPOSIT FUND**

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

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

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

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

(e) Every Employer party to this Agreement agrees that on request of the Trustees of the Operating Engineers Local 324 Pension Fund he will show his books or records of hourly employees to authorized representatives of said Trustees so that it can be determined whether the Employer is complying with the terms of this Agreement.

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

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

(h) Each Employer member of AGC Michigan Chapter by becoming a party to this Agreement authorizes and empowers its respective Association to act in his or its behalf.

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

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

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

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

(m) If the employees of the bargaining unit whose wages and fringes are in delinquency are removed from the job by the Union to enforce payment of delinquent wages, the aforementioned employees shall be paid by the delinquent Employer for all time lost at the straight-time hourly rate.

## **Section 32. PAY DAY**

(a) Each employee shall be paid weekly prior to quitting time by means of payroll check or U.S. currency on the day designated by the Employer as payday. The payroll check or U.S. currency shall be accompanied by a stub or memorandum indicating the dates of the pay period, hours worked, the gross amount of the check, F.I.C.A., any federal, state or local income tax withheld, Employer name, address, and the employee's name. All deductions shall be identified and listed. No more than one week's pay shall be held back. If payday falls on a holiday recognized in Section 27, the employee will be paid on the work day prior to the holiday.

(b) If paychecks are not issued on payday before quitting time, the employee shall be paid an additional four (4) hours at straight-time for each day (including Saturday, Sunday and holidays) the paycheck is late if the paycheck is for forty (40) or more hours of work; the employee shall be paid an additional two (2) hours at straight-time for each day (including Saturday, Sunday and holidays) the paycheck is late if the paycheck is for less than forty (40) hours of work. Additional pay shall not be required if the Employer was prevented from issuing checks by strikes, civil disorder, severe weather or other causality beyond his control.

(c) Any employee who is laid off or discharged shall be paid at the jobsite before quitting time on the day of layoff or discharge. If the employee is not paid at the jobsite when laid off or discharged, he shall be paid an additional two (2) hours at straight-time if his check is mailed to him, if he must leave the jobsite to pick up his check, or if he must return to the jobsite to obtain his check.

(d) At the time of layoff or discharge, the employee shall be presented with a severance slip showing the reason for severance. If an employee quits, he shall be paid in accordance with regular payroll procedures. An employee who is discharged or voluntarily quits shall be paid only for the hours actually worked on the day of termination of employment.

(e) A temporary work stoppage for reasons other than weather and not to exceed two (2) days will not be considered a layoff. A temporary work stoppage due to weather is not considered a layoff.

(f) If the Employer's payroll check is not honored by the bank upon which it is drawn for reason of insufficient funds, the Employer shall immediately thereafter

issue payment in U.S. currency, money order or certified check. The Union reserves the right to require cash payments in all future payrolls if checks are dishonored due to insufficient funds.

### **Section 33. TRANSPORTATION**

(a) Employees transferred from jobsite to jobsite during regular working hours shall be paid at the regular rate of pay while traveling.

(b) Whenever an employee drives any equipment away from the regularly assigned jobsite to another jobsite or parks equipment away from the jobsite overnight, the Employer will provide return transportation for the employee to his car.

### **Section 34. TRAVEL**

(a) Whenever an employee is sent out-of-town and is requested by the Employer to stay overnight, the Employer and employee will reach agreement on the amount and type of expenses for which the Employer will reimburse the employee. These expenses will be reimbursed upon presentation of proper receipts.

### **Section 35. REPORTING TIME**

(a) Unless the employee has been notified not to report to work before leaving his home, an employee who reports on the job but is not needed, regardless of weather conditions, shall receive two (2) hours reporting time at the applicable shift rate, during which time he shall do any work required in his jurisdiction except the operation of machinery. If he is held on the job for more than two (2) hours or starts to operate machinery, he shall receive pay for four (4) hours. If he is held on the job or works for more than four (4) hours, he shall receive pay of eight (8) hours; however, the shutdown of equipment does not constitute work for the purpose of calculating the amount of time worked.

(b) On Saturday show-up time is paid at one and one-half times the applicable shift rate. On Sunday and holidays show-up time is paid at double the applicable shift rate.

### **Section 36. NEW EQUIPMENT**

(a) Should new or unique equipment be utilized by the Employer which would normally be included within the scope of this Agreement and for which no classification exists, the Employer and the Union shall meet and attempt to agree upon a wage rate for such classification, and whether equipment preparation time is to be paid. If the parties are unable to agree upon a wage rate, then the issue shall be submitted to arbitration in accordance with the procedure of the National Center for Dispute Settlement.

### **Section 37. SUBCONTRACTING**

(a) The Employer expressly agrees that he will not enter into a subcontract for work traditionally performed under this Agreement to be done at the worksite with any Employer who does not abide by the wages, fringe benefit contributions, terms and conditions of this Agreement.

### **Section 38. JOBSITE REPAIRS**

(a) No repairs shall be made on the jobsite equipment that is being operated by employees covered by this Agreement except by an employee covered by this Agreement or another Agreement with the Union, or under the supervision of an employee covered by this Agreement or another Agreement with the Union.

### **Section 39. CHANGE HOUSE AND TOOLS**

(a) The Employer shall provide a safe and sanitary shelter in which employees may eat their meals, hand their clothing, and store their tools under lock. When necessary, the Employer shall furnish heat. The Employer shall provide proper sanitation and suitable containers for drinking water with paper cups or a bubbler.

(b) The Employer shall be responsible for tools lost due to damage or accident during working hours provided such damage is not the result of the employee's negligence.

(c) Procedures for control of tools, equipment and materials shall be established by the Employer and shall be observed by all employees

(d) Employers will provide one set of spectacles with a face mask lens holder at no cost to employees who wear prescription eye glasses. The Union agrees that this will not be abused, and whenever possible spectacles and lens holder from a previous Employer will be used.

## **Section 40. PARKING**

(a) The Employer will furnish adequate parking within a reasonable distance.

## **Section 41. JOINT GRIEVANCE BOARD**

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

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

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

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

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

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

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

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

The time limits provided for in any Step of the grievance procedure may be extended by mutual consent of the Union and the Employer.

The Joint Grievance Board shall appoint a Secretary from among its members, and the Board shall meet promptly upon written notice from the Secretary or from any member of the Board after receipt of such notice of requested meeting. The Secretary will schedule Board meetings after ascertaining the Employer's and the Union's availability. The Board will not issue a decision in the absence of the Employer or the Union. The Board will consider and decide all grievances relative to wages and all other terms and conditions of employment under this Agreement. Grievances shall be submitted in writing and shall be decided by a majority vote of the full Board consisting of six (6) members. The decision of the Board is final and binding.

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

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

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

(f) It is expressly agreed and understood that an Employer's failure to pay wages, or contributions to the Vacation and Holiday Fund, Security Deposit Fund, Health Care Fund, Pension Fund, Labor-Management Education Committee, Retiree Benefit Fund, Defined Contribution Plan, Industry Advancement Fund, or the Apprenticeship and Journeyman Retraining Fund as provided in this Agreement, shall not be considered as subject to arbitration, provided the Union gives seventy-two (72) hours written notice (excluding Saturday, Sunday and holidays) by certified mail, telegram or personal delivery to the Association and the Employer prior to taking economic action for failure to make payments required by this Agreement.

#### **Section 42. JURISDICTIONAL DISPUTES**

(a) In the event of a jurisdictional dispute involving the Union, the parties shall request the other union or unions involved to send representatives to the jobsite to meet with representatives of the Union and the Employer to settle the dispute. If a settlement is not reached at that meeting, the Union shall request that its International Union assign a representative who shall make arrangements to meet representatives of the other International Union or Unions involved and representatives of the Employer on the job site to seek settlement of the dispute. The Union and the Employer agree that there shall be no strikes, lockouts or interruption of work over jurisdictional disputes.

#### **Section 43. NO STRIKE - NO LOCKOUT**

(a) Throughout the term of this Agreement, the Union agrees that neither it nor any of its officers, agents or representatives shall engage in, authorize or encourage any stoppage or suspension of work, slow down, picketing, strike or concerted refusal to work. Excluded solely from the foregoing prohibition is a work stoppage authorized by Section 29 or by Section 6 (c) of this Agreement. No employee shall be required work under abnormally dangerous conditions.

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

## **Section 44. LIABILITY**

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

(b) The Employer agrees that he will not hold the Union liable for any acts of its members not authorized by the Union. The Union agrees that it will, on written request of the Employer, notify the Employer within twenty-four (24) hours after receipt of said request, whether the act of the member or members of the Union so complained of was or was not authorized, and if not authorized, the Union agrees that it will take immediate steps to rectify the situation complained of.

(c) The Union agrees that it will not hold any Employer liable for any acts of the agents of said Employer not authorized by said Employer. The Employer agrees he will, on written request by the Union, notify the Union within twenty-four (24) hours after receipt of said request at the office of the Employer, whether or not the act of the Employer's agent so complained of by the Union was authorized, and if not authorized, the Employer agrees that he will take immediate steps to rectify the situation complained of.

## **Section 45. OWNER OPERATOR**

An "Owner-Operator" is defined as (a) self-employed individuals who are currently working with or who have previously worked with (under the applicable collective bargaining agreement) the tools of the trade and who are signatory to and currently bound by a contribution agreement with an employee benefit plan sponsored by the Operating Engineers Local 324 Union (the "Union") of even date herewith and pursuant to which contributions are paid to such plan(s) (a "Contribution Agreement"); (b) an individual who is currently working with or who has previously worked with the tools of the trade (under the applicable collective bargaining agreement), and who has a twenty-five percent (25%) or more ownership interest in an

employer that is signatory to and currently bound by a Contribution Agreement; or (c) an individual who is currently working with the tools of the trade (under the applicable collective bargaining agreement) and whose spouse has a twenty-five percent (25%) or more ownership interest in an Employer that is signatory to and currently bound by a Contribution Agreement (each an “Owner-Operator.”)

#### **Section 46. MICHIGAN EMPLOYMENT SECURITY COMMISSION (MESC) AND WORKERS’ COMPENSATION COVERAGE**

Contractor to submit their Michigan Employment Security Commission registration number and Workers’ Compensation certificate to the Union upon request.

#### **Section 47. EQUAL TREATMENT**

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

#### **Section 48. MARKET RECOVERY**

(a) It is recognized by the parties that in certain areas of the State of Michigan, the construction market organized by the Building Trades Unions has encountered strong competition. Where the mutual interest of both the Employer and the Union are served by cooperating to compete more effectively, it is agreed that the Employer and the Union will meet to negotiate a Market Recovery wage rate on a jobsite or area basis.

#### **Section 49. SAVINGS CLAUSE**

(a) In the event that any portion of this Agreement is declared or becomes inoperative under state or federal laws, the remainder of the Agreement shall remain in full force and effect, and the parties agree to meet and renegotiate the inoperative portion of the Agreement.

## **Section 50. TERMINATION**

(a) This Agreement shall remain in full force and effect until the first day of October, 2010, and thereafter shall renew itself from year to year unless any party hereto shall notify the other parties, in writing, at least ninety (90) days prior to any anniversary date of this Agreement of its desire to change in any way or terminate this Agreement. Such written notice shall be sent by registered or certified mail to the other parties. In the event of notice by any party to change and/or terminate and no agreement on such changes is reached prior to October 1, 2010, this Agreement shall be deemed to have terminated on October 1, 2010.

IN WITNESS WHEREOF, we, the undersigned duly authorized representatives of The Associated General Contractors of America, Detroit Chapter, Inc. and the International Union of Operating Engineers Local 324, 324-A, 324-B, and 324-C, AFL-CIO, do hereby affix our signatures.

INTERNATIONAL UNION OF OPERATING ENGINEERS,  
LOCAL 324, 324-A, 324-B AND 324-C, AFL-CIO

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John M. Hamilton, Business Manager

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Ryan J. Dunn, President

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Leo L. Bodette, Rec-Corr. Secretary

THE ASSOCIATED GENERAL CONTRACTOR  
OF AMERICA, MICHIGAN CHAPTER, INC.

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Samuel J. Veltri, Director of Labor Relations

AGC, Michigan Chapter, Inc.  
26001 Five Mile Road  
Redford, MI 48239  
Phone: (313) 533-3509

International Union of Operating  
Engineers Local 324, 324-A, 324-B  
and 324-C, AFL-CIO  
37450 Schoolcraft Rd., Suite 110  
Livonia, Michigan 48150  
Phone: (734) 462-3660

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opeiu #42 afl-cio  
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## **Section 29 (c). WAGES AND FRINGE BENEFIT CONTRIBUTIONS**

The minimum rate of wages for journeymen Operating Engineers shall be as follows:

### **LEVELS OF PROTECTION**

**LEVEL A** - Fully encapsulating chemical resistant suit with pressure-demand, full face piece SCBA or pressure-demand supplied-air respirator with escape SCBA. The highest available level of respiratory, skin and eye protection.

**LEVEL B** - Pressure-demand, full face piece SCBA or pressure-demand supplied-air respirator with escape SCBA with chemical-resistant clothing.

**LEVEL C** - Full face piece, air-purifying canister-equipped respirator with chemical-resistant clothing.

**LEVEL D** - Coveralls, safety boots, glasses or chemical splash goggles and hard hats.

### **GEOGRAPHIC ZONES**

**ZONE I** consists of the following counties: Genesee, Lapeer, Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw and Wayne.

**ZONE II** consists of all the remaining counties in the upper peninsula and lower peninsula of the State of Michigan, not encompassed by Zone I.

### **CLASSES OF EQUIPMENT**

**Class I equipment consists of:**

Backhoe, Batch Plant Operator, Clamshell, Concrete Breaker when attached to hoe, Concrete Cleaning Decontamination Machine Operator, Concrete Pump, Concrete Paver, Crusher, Dozer, Elevating Grader, Endloader, Farm Tractor (90 h.p. and higher), Gradall, Grader, Heavy Equipment Robotics Operator, Hydro Excavator, Loader, Pug Mill, Pumpcrete Machines, Pump Trucks, Roller, Scraper (self-propelled or tractor drawn), Side Boom Tractor, Slip Form Paver, Slop Paver, Trencher, Ultra High Pressure Waterjet Cutting Tool System Operator, Vactors, Vacuum Blasting Machine Operator, Vertical Lifting Hoist, Vibrating Compaction Equipment (self-propelled), and Well Drilling Rig.

**Class II equipment consists of:**

Air Compressor, Concrete Breaker when not attached to hoe, Elevator, End dumps, Equipment Decontamination Operator, Farm Tractor (less than 90 h.p.), Forklift, Generator, Heater, Mulcher, Pigs (Portable Reagent Storage Tanks), Power Screens, Pumps (water), Stationary Compressed Air Plant, Sweeper, Water Wagon and Welding Machine.

Regular Crane Operators rate shall include Mechanics, Crane Operators, Dragline Operators, Boom Truck Operators, Power Shovel Operators and Concrete Pumps with booms.

**Effective first full pay period commencing after October 1, 2007 through September 30, 2008:**

**PROTECTION LEVEL A**

<b>Class I</b>	<b>Zone 1</b>		<b>Zone II</b>	
	<b>1st Shift</b>	<b>2nd/3rd</b>	<b>1st Shift</b>	<b>2nd/3rd</b>
Base Wage	\$27.42	\$28.10	\$25.93	\$26.51
V&H @ 15%	4.11	4.21	3.89	3.98

**Class II**

Base Wage	\$23.74	\$24.44	\$22.10	\$22.66
V&H @ 15%	3.56	3.67	3.32	3.40

**Engineer when Operating Crane with Boom and Jib or Leads 220' or Longer**

Base Wage	\$29.98	\$30.66	\$28.50	\$29.08
V&H @ 15%	4.50	4.60	4.27	4.36

**Engineer when Operating Crane with Boom and Jib or Leads 140' or Longer**

Base Wage	\$29.72	\$30.40	\$28.23	\$28.82
V&H @ 15%	4.46	4.56	4.24	4.32

**Regular Crane Operator, Job Mechanic, Dragline Operator, Boom Truck Operator and Concrete Pump with Boom Operator**

Base Wage	\$28.26	\$28.94	\$26.77	\$27.36
V&H @ 15%	4.24	4.34	4.02	4.10

**PROTECTION LEVEL B & C**

Class I	Zone I		Zone II	
	1st Shift	2nd/3rd	1st Shift	2nd/3rd
Base Wage	\$26.59	\$27.27	\$25.10	\$25.69
V&H @ 15%	3.99	4.09	3.77	3.85

**Class II**

Base Wage	\$22.91	\$23.57	\$21.29	\$21.83
V&H @ 15%	3.44	3.54	3.19	3.28

**Engineer when Operating Crane with Boom and Jib or Leads 220' or Longer**

Base Wage	\$28.16	\$29.83	\$27.59	\$28.25
V&H @ 15%	4.37	4.48	4.14	4.24

**Engineer when Operating Crane with Boom and Jib or Leads 140' or Longer**

Base Wage	\$28.90	\$29.57	\$27.31	\$27.99
V&H @ 15%	4.33	4.44	4.10	4.20

**Regular Crane Operator, Job Mechanic, Dragline Operator, Boom Truck Operator and Concrete Pump with Boom Operator**

Base Wage	\$27.43	\$28.11	\$25.95	\$26.53
V&H @ 15%	4.12	4.22	3.89	3.98



**PROTECTION LEVEL D WHEN CAPPING LANDFILL**

**Class II**

Base Wage	\$21.57	\$22.23	\$19.94	\$20.49
V&H @ 15%	3.23	3.33	2.99	3.07

**Engineer when Operating Crane with Boom and Jib or Leads 220' or Longer**

Base Wage	\$27.81	\$28.49	\$26.32	\$26.90
V&H @ 15%	4.17	4.27	3.95	4.04

**Engineer when Operating Crane with Boom and Jib or Leads 140' or Longer**

Base Wage	\$27.55	\$28.23	\$26.06	\$26.64
V&H @ 15%	4.13	4.23	3.91	4.00

**Regular Crane Operator, Job Mechanic, Dragline Operator, Boom Truck Operator and Concrete Pump with Boom Operator**

Base Wage	\$25.55	\$26.77	\$24.60	\$25.18
V&H @ 15%	3.83	4.01	3.69	3.78

**FRINGE BENEFITS PACKAGE - Applies to all Classes, Shifts and Zones**

Insurance	\$7.85
Pension	6.35
Retiree Benefit Fund	.45
Apprenticeship Fund	.10
Labor Management	
Education Committee	.06
Defined Contribution Plan	1.00
I.A.F.	.10

\*All Mechanics will be paid Regular Crane Rate.

## APPRENTICE WAGES

The starting rate for Apprentice Engineers shall be seventy percent (70%) of the Regular Engineer's base wage, plus the payment of all fringe benefit contributions (except the Apprentice Training Fund contribution). Every six (6) months during the training period, the Apprentice Engineer's rate will be increased by five percent (5%) of the Regular Engineer's base wage plus applicable fringes, subject to the Apprentice Engineer's satisfactory compliance with the Apprenticeship Rules and receiving a passing grade on the validated competency tests, as certified by the Operating Engineers Local 324 Joint Apprenticeship Training Committee.

SIGNATURE PAGE FOR EMPLOYERS NOT A MEMBER OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, MICHIGAN CHAPTER, INC.

This Agreement is entered into on \_\_\_\_\_ 20\_\_, between the undersigned Employer, hereinafter referred to as Employer, and the International Union of Operating Engineers Local 324, 324-A, 324-B and 324-C, AFL-CIO, hereinafter called the Union.

The Employer agrees to adopt the foregoing Agreement, to be bound by all the terms and conditions of the Agreement and amendments thereto, including effective dates, and to become a party thereto. It is also agreed by the Employer that any notice given by the Union to the Association pursuant to Section 48, "Termination," shall be notice to the Employer and shall have the same legal force and effect as though it were served on the Employer.

Finally, the Employer agrees that, unless the Union is notified to the contrary by the Employer by registered or certified mail at least ninety (90) days prior to the expiration date of this Agreement, or any subsequent Agreement, the Employer will be bound by and adopt any Agreement reached by the Union and the Association during subsequent negotiations.

Employer Name \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
By (Signature) \_\_\_\_\_ Title \_\_\_\_\_  
Federal Employer Identification Number (EIN) \_\_\_\_\_  
Contractor's State License \_\_\_\_\_  
Michigan Corporation and Security  
Commission Registration No. \_\_\_\_\_  
Workers' Compensation Insurance Firm \_\_\_\_\_  
Policy No. \_\_\_\_\_ Expiration Date \_\_\_\_\_  
M.E.S.C. NUMBER \_\_\_\_\_  
OPERATING ENGINEERS LOCAL 324  
By \_\_\_\_\_ Title \_\_\_\_\_  
Date \_\_\_\_\_

## APPENDIX A

### DRUG/ALCOHOL TESTING PROCEDURE

1. Testing will be performed by a laboratory located in and licensed by the State of Michigan as a medical and forensic laboratory and operating in compliance with the Scientific and Technical Guidelines for Federal Drug Testing Programs, 53 C.F.R. 119.79 (1988), as amended.
2. The test sample (urine specimen) will be obtained at an authorized collection center from the person being tested in accordance with the following procedures:
  - A. Identification of the person being tested shall be verified by the laboratory at the time the sample is given.
  - B. A clean, previously unused collection and storage container of a type utilized by medical facilities shall be supplied for collection of the sample. The person being tested may reject any container or collection bottle he has reason to believe is contaminated.
  - C. The sample shall be in one (1) container and a serially numbered label shall be affixed and taped over with clear tape, in the presence of the person being tested.
  - D. The person being tested shall report, on a standard form, any medication he is currently using, either prescribed by a licensed medical practitioner or proprietary medicines obtained over-the-counter.
  - E. The laboratory shall maintain a "chain of custody" control of the sample.
  - F. Any communication regarding the sample shall be referred by the numerical identification number. The name of the person being tested shall not be used or divulged by laboratory personnel.
3. Laboratory testing shall be conducted as follows:
  - A. The initial screen test shall be conducted by using the EMIT (Enzyme Multiplied Immunoassay Technique) analysis method. If the initial test result is "negative," the Employer shall be notified immediately. Any remaining portion of the sample shall be disposed of and all labels, chain of custody records and other reports shall be destroyed.

B. If the initial screening test is "positive," a confirmation test using the GC/MS (Gas Chromatography/Mass Spectrometer) method shall be conducted. If the result is negative, the procedure in (1) above shall be followed.

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

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

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

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

8. The Employer shall designate a management staff person to be the Medical Records Officer. The MRO shall be the sole recipient of all reports submitted by the testing laboratory, and he shall initiate any action taken as a result of this testing procedure. The MRO shall maintain, in separate files, records pertaining to the Employer's substance abuse program and shall not disseminate any information to any third party or any electronic data bank.

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