

**INTERNATIONAL UNION OF
OPERATING ENGINEERS**

**LOCAL 137 - 137A - 137B - 137C - 137R
1360 Pleasantville Road, Briarcliff Manor, N.Y. 10510**

914-762-0600

AUGUST 4, 2014 to MAY 31, 2017

**CONCRETE PLANTS AND YARDS
COVERING WAGES ---- WORKING CONDITIONS**

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AGREEMENT MADE AND ENTERED INTO THIS 4TH DAY OF AUGUST 2014 by and between CONCRETE PLANTS AND YARDS AND CONSTRUCTION INDUSTRY COUNCIL OF WESTCHESTER AND HUDSON VALLEY, INC. who are referred to hereinafter as the "Employer", and the INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCALS 137, 137A, 137B, 137C, 137R, AFL-CIO, hereinafter referred to as the "Union" for and in behalf of said Union and on behalf of the Employees now employed or hereinafter to be employed by the Employer during the term of this agreement and hereinafter referred to as the "Employees". WHEREAS, the Employer and the Union have a common interest in maintaining harmonious relations; the parties hereto desire to enter into this Agreement for the purpose of establishing the wages, hours and conditions of employment for Employees represented by the Union, and employed by the Employers subject to this contract.

NOW, THEREFORE, in consideration of the premises aforesaid, it is agreed between the parties as follows:

ARTICLE I
TERRITORIAL APPLICATION AND SCOPE OF EMPLOYMENT

This Agreement, and all conditions and wage rates contained herein shall apply to and be effective on all work performed or to be performed in concrete plants, of the Employer in the Counties of Westchester, Putnam, and that part of Dutchess County extending North to the Northern City limit line of Poughkeepsie, New York. Bounded on the West by the middle of the Hudson River, and on the East by the State line of Connecticut, within the scope of employment covered by this Agreement, and shall not apply to Heavy and Highway Construction or Building Construction.

ARTICLE II
JURISDICTION

Section 1. The Employer agrees that Local 137, 137A, 137B, 137C, 137R shall be the exclusive representative of all Employees of the Employer performing work within the recognized jurisdiction of the Union, including but not limited to Employees engaged in the operating, maintenance, repair, erection and dismantling of all types of equipment used in and about concrete plants, all hoisting and portable engines and boilers, cranes, mixers, concrete mixing plants, crushing plants, hoppers and plants of all types - both permanent and portable, conveyors, dredges, front end loaders, fork lifts, pumps, compressors, quarry master joy heavy weight champion, etc., Ross Carriers and similar straddle trucks, or any other machine irrespective of motor power or size, now or hereafter used in concrete plants. All mechanical and repair work, all greasing, oiling, maintaining and repairing of equipment and plants, the erection and dismantling of

plants and all work usually and customarily be done by Employees of the Employer who are within the bargaining unit.

performed by hoisting and portable Engineers, Local 137, within its craft jurisdiction shall

Section 2. All jurisdictional disputes between or among any building and construction trade unions affiliated with a national or international union that is a member of the Building and Construction Trades Department, and any Employers that are parties to or have adopted this Agreement, shall be settled and adjusted according to the present plan established by the Building and Construction Trades Department Plan (Plan for National Joint Board for Settlement of Jurisdictional Disputes in the Building and Construction Industry) or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on Employers that are parties to or have adopted this Agreement and on all unions affiliated with a national or international union that is a member of the Building and Construction Trades Department, whether or not parties to this Agreement. This clause shall apply to all jurisdictional disputes involving Employers bound by this Agreement and affiliated building and construction unions, whether or not such disputes arise in connection with work covered by this Agreement.

Section 3. In all other occasions involving jurisdictional disputes not covered under Section 2 of this Article aforesaid, the parties agree that all such jurisdictional disputes shall be resolved by and between the Employer and the Unions involved without referring the same to the National Labor Relations Board and there shall be no strike or lockout with respect to any jurisdictional disputes.

ARTICLE III

UNION RECOGNITION AND SECURITY

Section 1. The Employer hereby recognizes and acknowledges the Union as the sole and exclusive bargaining representative of all Employees in the classifications for work covered by this Agreement, and schedules attached and made a part hereof, namely Engineers, Apprentice Engineers, Legacy Engineer, Mechanics, Mechanics Helpers, Welders, Welders Helpers, Utility Men, and all other skills and crafts within the jurisdiction of the Union and all persons performing the classes of work covered by this Agreement.

Section 2. It shall be a condition of employment that all Employees of the Employer covered by this Agreement who are members of the Union in good standing on the execution date of this Agreement shall remain members in good standing and those who are not members on the execution date of this Agreement shall on the 31st day following the execution 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 execution date shall on the 31st day following the beginning of such employment become and remain members in good

standing in the Union.

ARTICLE IV **EMPLOYMENT**

Section 1. The Employer when desiring to employ persons covered under this Agreement in calling upon the Union for a qualified workman shall give all pertinent data with respect to type and location of work at least 48 hours (not including Saturday, Sunday, or Holidays) prior to the time such workman is needed so as to afford the Union equal opportunity to recommend competent qualified applicants, it being understood the Employer shall hire who-so-ever he or it sees fit.

Section 2. It is further agreed that such Employment shall be under the terms, conditions, and rate of wages provided in this Agreement, which terms, conditions and rate of wages have been arrived at and determined through bona fide collective bargaining between all parties to this Agreement.

Section 3. The employer agrees that he or it will not make an individual agreement with an Employee to avoid the terms, conditions or rate of wages of this Agreement.

Section 4. No Employees shall be subject to a physical examination, nor be required to complete physical and/or safety questionnaires in order to be employed, without the consent of the union.

Section 5. There shall be no discrimination because of race, creed, color and sex.

Section 6. (a) In all concrete plants and yards, on Sunday or Holidays or a day celebrated as such, if an Employee is notified, reports for work regardless of whether or not his services are needed, he shall receive two (2) day's pay and if a holiday the appropriate holiday rate as defined in Article VII, Section 1.

(b) In all concrete plants, if an Employee is notified and reports for work on a Sunday or holiday or day celebrated as such regardless of whether his services are needed, he shall receive two (2) day's pay and if a holiday the appropriate holiday pay as defined in Article VII, Section 1.

(c) In all concrete plants and yards, on Saturday, Sunday, or Holiday's the Operator has the first refusal to work if his engine or machine is needed on any said day's. If said operator chooses not to come in, then only the replacement operator shall be paid. In any event, if an Employee is not ordered out on a Saturday, Sunday or Holiday or day celebrated as such, and his engine or machine is operated by another Employee, he, as well as the Employee who operates the machine or engine shall receive the appropriate pay as required by paragraph a), b), c) of this Section. Saturday will be paid at one and one-half time (1½) times the regular wage rate. This provision shall not apply in an emergency. For purposes of this Article, an emergency shall be defined as any situation endangering Life, Limb, and/or Property.

(d) In any event a machine is used on a Saturday to replenish material and the Operator was not ordered out, said Operator shall receive a minimum of four (4)

hours pay at one and one – half (1½) times the regular wage rate.

If a machine is needed to replenish material said machine shall be operated by a Local 137 Operating Engineer. Replenishing of the material shall be allowed one time in the duration of the day on Saturday if the Operator is not ordered out.

Section 7. The Employer shall continue during the term of this Agreement any benefit or condition of work more favorable than those contained in this Agreement.

Section 8. The Employer shall pay Employees for the time lost on account of court appearances in the Employer's behalf and for presence at hearings conducted before the Workmen's Compensation Board.

Section 9. If equipment is on the jobsite, this Agreement shall cover the fitting up, dismantling, repairing and maintaining and operating of machinery and plants. It shall cover all maintenance and mechanic work. If equipment is taken off the job site to be repaired it is mutually agreed that the repairing will be done by Employees of the Employer covered under this Agreement or to a Union Shop approved by Local 137 or a Shop under Contract with the International Union of Operating Engineers. Notwithstanding the above language, the Employer may refer maintenance or mechanic work to a non-signatory dealership or manufacturer of the equipment in question only where said dealership or manufacturer will not release the software necessary for the repair of the equipment in question, or warranty work on leased or rental equipment.

Section 10. Employees ordered out to work by the Employer, and not permitted to work shall be paid eight (8) hours straight time rate Monday through Friday (one day's pay).

Section 11. During the period of December 15th through April 15th a 24 hour guarantee will be in place. No Saturday straight time make up. Mechanics and Welders excluded from 24 hour guarantee.

Section 12. The Union on ten (10) days written notice to the Employer shall have the right to institute a Hiring Hall System in lieu of or in addition to the procedure suggested in Article IV, Section 1 herein. Upon the giving of such notice, the Employee and the Union shall meet for the purposes of negotiating the terms, conditions, rules and regulations which govern the operation of the Hiring Hall. Any Hiring Hall System shall be drafted to conform to applicable law and decisions of administrative agencies having jurisdiction.

Section 13. Utility man to be employed the first 18 months at the lower rate, then after eighteen (18) months he is to receive the higher rate according to his job classification in the Wage Schedules (Groups I through V) or be removed by the Union and placed into a field job. If at the end of his eighteen (18) months training period, the Union has no job placement for the Utility Man, it will be his discretion to stay at his present job and present wage or be placed on the Union out-of-work list.

ARTICLE V **WORK WEEK**

Section 1. Employees shall be employed on a straight time weekly basis of guaranteed forty (40) hours consisting of the five (5) week days, Monday through Friday inclusive, except however that if a job begins after the start of such, or terminates before the end of such week, then payment shall be upon the basis of actual days worked in that week.

One (1) two hour shape day will be available per week, weather related only. All Employees must report to work on said shape day, no call ins allowed to cancel work. In the event that work is started, the Employee will be paid eight (8) hours. No Saturday straight time make up.

Section 2. It is hereby mutually understood and agreed that the regular work week shall commence on Monday at 6:30 A.M., and terminate on Friday at 3:00 P.M., and that each such working day will constitute eight (8) hours or any part thereof., except for the months of December 15th through April 15th when an 8:00 A.M. to 4:30 P.M. will be allowed.

Section 3. Overtime hours cannot be used to accumulate guaranteed (40) hours.

Section 4. Before the start of a two shift operation, the Employer and the Union shall hold a pre-job conference. Failure of the Employer to request such a conference shall be a violation of this Agreement.

Section 5. Where jobs are being operated on a three shift basis, the second and third shifts shall be paid the regular rate plus (\$0.50) fifty cents per hour premium for all classifications.

Section 6. When the Employer desires to work shift work, it is understood and agreed that the work week for the first shift will commence starting Monday at 6:30 A.M., and terminate at 3:00 P.M. From December 15 thru April 15 an 8:00 am to 4:00 P.M. shift will be allowed.

Section 7. Whenever a second shift is employed, it is also understood and agreed that the work week will commence Monday at 3:00 P.M., and terminate Friday at 11:00. From December 15 thru April 15 a 4:00 P.M. to 12 Midnight shift will be allowed.

Section 8. In the event a third shift is employed, it is understood and agreed that the work will commence Sunday at 11:00 P.M. and will terminate Friday at 7:00 A.M. From December 15 thru April 15 a 12 midnight to 8:am shift will be allowed.

Section 9. When working shift work, Employees shall be allowed not less than one-half (1/2) hour for lunch as part of each eight (8) hour shift and shall be paid for the full eight (8) hours.

Section 10. In the event that a shift starts at a time other than listed in Sections 7, 8 and 9, said shift will be considered an irregular shift and will be paid at the rate of 15% above set Wage Schedule.

ARTICLE VI **OVERTIME**

Section 1. In all concrete plants and yards overtime shall consist of all work performed prior to 6:30 A.M. and subsequent to 3:00 P.M. of each working day, and shall also include all work performed on Saturday, and shall be paid for at the rate of time and a half except as defined in Article five, Section two and three. Sundays shall be paid for at the rate of double time. From December 15 thru April 15 overtime shall consist of all work performed prior to 8:00 A.M. and subsequent to 4:30 P.M.

Section 2. In the event the Employer has a first, second, or irregular shift, all work performed before or after the regular shift hours shall be paid at the rate of time and one-half. Time and one-half shall be calculated after the shift premiums have been added.

Section 3. In all concrete plants and yards any part of an hour worked before 7:00 A.M., or during lunch period (12 noon to 12:30 P.M.) or after 3:30 P.M., shall be paid for in half-hour increments at time and a half.

ARTICLE VII **HOLIDAYS**

Section 1. The following Holidays shall be observed and shall be paid Holidays: New Years Day, Lincoln's Birthday, President's Day , Good Friday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day and Christmas Day. If Employees are required to work on any of said Holidays, they shall be paid at the rate of double (twice the regular rate). Paid Holidays shall be counted as days worked.

Section 2. Whenever a paid Holiday falls on Saturday, it is mutually understood and agreed that it shall be paid for as such in addition to his weekly compensation. If any Employee works that day, he shall be paid at the rate defined in Section (1) of this Article.

Section 3. Whenever any of the above Holidays fall on Sunday, they will be observed on the following day and paid for as such. Whenever an Employee works on these days, he shall be paid at the rate defined in Section (1) of this Article.

Section 4. When an Employee works two (2) days in a work week he/she shall be paid for all Holidays in that week.

Section 5. Whenever an Employee works at least ten (10) days during the period of December 15th through April 15th, he shall be paid for all Holidays in that month.

Section 6. If a Holiday occurs while an Employee is on vacation, and he/she is replaced, he /she will **not** receive that said Holiday pay. In the instance where both the regular employee and his/her temporary replacement are eligible for Holiday pay, only one employee will receive said Holiday pay.

Section 7. The Employer shall not lay-off an Employee for the purpose of avoiding a paid Holiday.

ARTICLE VIII WAGES

Section 1. Wages shall be paid weekly in currency, Direct Deposit or by check at the plant where Employees covered by this Agreement are employed at least one (1) hour before quitting time on Employer's pay day, in accordance with the weekly rates itemized on the schedule attached hereto and made a part of this Agreement.

Section 2. If payment is made by check it must be a Payroll check or similar type of check. Checks will not be accepted on Fridays.

Direct Deposit will be accepted on Fridays or the day before a Holiday provided the money is credited to the Employees' account the same day.

Section 3. Telephone calls are not to be recognized as a legitimate method of lay-off. If the Employer does not pay the Employee's full wages within three (3) days of discharge, he/she shall pay the Employee waiting time up to a maximum of 16 hours at the appropriate overtime rate.

Section 4. If death occurs in an Employee's immediate family, he/she shall be allowed up to three (3) days off with pay for respect and funeral. He/she shall also be allowed one (1) day off with pay for funeral of a relative. For purposes of this Agreement, immediate family is defined as the Employee's parents, sisters, brothers, spouse, in-laws, children, grandparents and grandchildren. A relative is defined as the Employee's nieces, nephews and his wife's grandparents. Bereavement pay does not apply to temporary Employees. An Employee is only eligible for this benefit if he/she has worked at least twenty (20) calendar days for that Employer during the calendar year. An Employee who has not worked at least twenty (20) calendar days for that Employer shall be allowed to take bereavement days off without pay.

Section 5. The rates of wages are the minimum rates of wages to be paid. If any Employees are receiving a rate of wages in excess of that herein prescribed, it is mutually understood and agreed that they will continue in force.

Section 6. Employees operating machines or equipment temporarily moved into a yard, shall continue to receive the prevailing highway rate of wages and conditions.

ARTICLE IX **VACATIONS**

Section 1. The Employer agrees to grant paid vacations to the Employees covered by this Agreement. Each Employee shall receive a paid vacation of two (2) weeks in each calendar year. Vacation time to start any time after One Hundred Twenty-five (125) days of employment. If an Employee is employed less than the required number of days to entitle him to receive two (2) weeks vacation in each calendar year, he shall be compensated on a pro-rated basis.

Section 2. An Employee employed by an Employer, his successor or assigns for more than five (5) cumulative years, provided he has worked at least one hundred twenty-five (125) days during a calendar year for which he gets the vacation, shall receive vacation as follows:

- 6 years - two (2) weeks and one (1) day;
- 7 years - two (2) weeks and two (2) days;
- 8 years - two (2) weeks and three (3) days;
- 9 years - two (2) weeks and four (4) days;

Section 3. The Employee must give the Employer thirty (30) days' notice of the dates on which he or she will be taking vacation. It is the intention of the parties that the Employee shall take his vacation time in each contract year, so that replacements can be employed during vacation periods as employment conditions warrant.

Section 4. In addition, an Employee employed by the Employer, his successors or assigns for ten (10) cumulative years, shall receive a third weeks paid vacation provided he has worked at least One Hundred Twenty-five (125) days during the calendar year for which he gets the vacation. Similarly, those Employees with:

- 12 years shall receive three (3) weeks and two (2) days.
- 14 years shall receive three (3) weeks and four (4) days.
- 15 years shall receive four (4) weeks.

Provided he accumulates this benefit by December 31, 1993. Vacations will be limited to three weeks for anyone who accumulates this benefit after December 31, 1993.

Section 5. Vacation accrual time shall continue in the case of and to the extent that an Employee who, having reported for work, and having worked following the commencement of the season, is injured on the job, and received Workmen's Compensation.

Section 6. Vacation pay shall be paid on forty (40) hours straight time, at the Employee's regular rate. After One Hundred Twenty-five (125) days of employment, the

Employee will be eligible for vacation. Employer and Employee shall mutually agree on a satisfactory time for the Employee to take his vacation. It is the intention of the parties to this Agreement that the Employee must take his vacation time off. Vacation time to be taken so men can be employed while men are on vacation to create jobs as employment conditions warrant.

Section 7. Employees hired prior to August 4th, 2014 have grandfather status. Employees hired on or after August 4, 2014 will be capped at 2 weeks vacation max.

ARTICLE X WELFARE FUND

Section 1. Contributions for all hours worked (capped at 1800 hours per year per employee), by Employees covered by this Agreement are to be paid to the Welfare Fund by check made payable to the International Union of Operating Engineers, Joint Funds Local 137, 137A, 137B, 137C and 137R and remitted monthly. Check shall be delivered to the Local 137 Funds' Office by the 30th day of the following month.

Section 2. A representative or representatives selected by the Business Manager of the International Union of Operating Engineers Local 137, 137A, 137B, 137C, and 137R and an equal number of representatives selected by the CONSTRUCTION INDUSTRY COUNCIL OF WESTCHESTER AND HUDSON VALLEY, INC. shall form a Joint Board of Trustees to administer this Welfare Fund, it being understood and agreed that all Employer representatives shall be selected from among those employers having collective bargaining agreements with the Union at that time, and who have an office and a permanent place of business within the territorial jurisdiction of the Union, as the same is set forth in Article I of this Agreement, it is further understood that the person actually designated to serve as such Employer-Trustee shall be a corporate officer, owner, or co-owner of the Employer.

ARTICLE XI PENSION FUND

Section 1. Contributions for all hours worked, (capped at 1600 hours per year per employee), by Employees covered by this Agreement are to be paid to the Pension Fund by check made payable to the International Union of Operating Engineers Local 137, 137A, 137B, 137C and 137R Joint Funds. Check shall be delivered to the Local 137 Funds' Office by the 30th day of the following month.

Section 2. The Trustees selected to administer the Welfare Fund of the International Union of Operating Engineers, Local 137, 137A, 137B, 137C and 137R shall also be selected as Trustees to administer the Pension Fund.

ARTICLE XII APPRENTICE, SKILL IMPROVEMENT AND SAFETY FUND

Section 1. Contributions for all hours worked by Employees covered by this Agreement are to be paid to Local 137 Operating Engineers Apprenticeship, Skill Improvement and

Safety Funds, and the check shall be delivered to the Local 137 Funds' Office by the 30th day of the following month.

Section 2. A representative or representatives selected by the Business Manager of the International Union of Operating Engineers, Local 137, 137A, 137B, 137C and 137R and an equal number of representatives selected by the CONSTRUCTION INDUSTRY COUNCIL OF WESTCHESTER AND HUDSON VALLEY, INC, shall form a Joint Board of Trustees to administer this Apprenticeship, Skill Improvement and Safety Fund, it being understood and agreed that all Employer representatives shall be selected from among those Employers having collective bargaining agreements with the Union at the time, and who have an office and a permanent place of business within the territorial jurisdiction of the Union, as the same is set forth in Article I of this Agreement. It is further understood that the person actually designated to serve as such Employer-Trustee shall be a corporate officer, owner or co-owner of the Employer.

ARTICLE XIII **SUPPLEMENTAL DUES CHECK-OFF**

Supplemental Dues Check-Off. The Employer shall deduct from the wages on all hours worked by all Employees covered by this Agreement and who have signed and delivered to the Employer proper legal authorization for such deductions the sums representing hourly Supplemental Union dues as certified by the appropriate Union representative. The wage rates shown in the Agreement include the Dues Check-Off.

Said sums shall be payable to the Local Union as supplemental dues on behalf of the members of Local 137, 137A, 137B, 137C & 137R and supplemental service charges on behalf of non-members and reported on forms provided for that purpose. Said forms shall contain the necessary information and details of these deductions and hours worked by Employees covered by this Agreement, as may be required. Such reports and payments shall be made monthly.

ARTICLE XIV **INDUSTRY ADVANCEMENT FUND**

Section 1. The Heavy Construction Industry Advancement Fund, also known as the Construction Industry Council of Westchester and Hudson Valley, Inc., hereinafter referred to as the "IAF" has been established for the purpose of promoting industry advancement programs to improve conditions in the industry.

Section 2. Effective August 4, 2014, all Employers bound by the terms of the Collective Bargaining Agreement shall contribute to the Industry Advancement Fund an amount equal to \$.18 per hour not to exceed a maximum of forty (40) hours per week worked by all Employees covered by this Agreement. The contributions required hereunder shall be made monthly and reported on the same forms used for the Dues Check Off and forwarded by separate check made payable to the Industry Advancement Fund. There shall be no commingling of this check with funds of the Union or with the fringe benefit funds. All monies received by the Union for the Industry Advancement Fund are to be treated as trust funds and shall be immediately remitted to the Industry Advancement Fund upon receipt by the Union.

Section 3. The Union shall have no control over the utilization of the Industry Advancement Fund, but will be consulted as to suggestions for the advancement of the Industry.

ARTICLE XV
ANNUITY FUND

Section 1. Contributions for all hours worked by Employees covered by this Agreement up to a maximum of forty (40) hours per week are to be paid by check made payable to the International Union of Operating Engineers Local 137, 137A, 137B, 137C and 137R Joint Funds. Check shall be delivered to the Local 137 Funds' Office by the 30th day of the following month.

Section 2. The Trustees selected to administer the Welfare Fund of the International Union of Operating Engineers, Local 137, 137A, 137B, 137C and 137R shall also be selected as Trustees to administer the Annuity Fund.

ARTICLE XVI
P.A.C.

Section 1. The Employer shall deduct from the wages of each Employee covered by this Agreement sums representing political contributions, provided that at the time of such deduction there is in possession of the Union a current written authorization executed by the Employee in the following form:

"I hereby authorize the Employer to deduct from my pay the sum of \$0.05 (five cents) for each hour worked limited to 40 hours and forward that amount to the Local 137 Political Action committee. This authorization is voluntarily made on the specific understanding that the signing of this authorization and the making of payments to the said Committee are not conditions of membership in the Union or of employment with the Employer and that the said Committee will use the money it receives to make political contributions and expenditures in connection with federal, state, and/or local elections.

This authorization may be revoked at any time by giving 15 days written notice to the Employer with a copy to the Local Union."

Section 2. Check in payment of said political contributions shall be made payable to Local 137 Joint Funds account and shall be delivered to the Local 137 Funds' Office by the 30th day of the following month.

ARTICLE XVII
COLLECTION OF FRINGE BENEFIT CONTRIBUTIONS

Section 1. If an Employer fails to pay wages or contributions as provided for in Articles X, XI, XII, XIII, XIV, XV and XVI when due, said Employer shall be required to pay on

any amount adjudged and unpaid, the following damages, in addition, to the contributions or wages owed:

(a) Interest upon the amount owed in contributions or wages calculated at the annual rate of ten percent;

(b) Liquidated damages equal to ten percent of the amount owed in contributions or wages;

(c) Any audit fees incurred by the Trust Funds in calculating an amount owed in contributions or wages;

(d) Reasonable attorneys' fees incurred by the Trust Funds in any proceeding at law or equity required to compel payment of contributions or wages owed; and

(e) Costs associated with the commencement of any proceeding at law or equity required to compel payment of contributions or wages owed, including but not limited to court filing fees.

Section 2. In the event that an Employer owing fringe benefit contributions becomes defunct, any new corporation with the same principal ownership and control shall be restricted from signing this Agreement until such time as said new corporation satisfies in full the fringe benefit deficiency of the defunct Employer. Principal ownership and control shall include, but be not limited to alter ego companies, double breasted companies and any other companies that a principal owner has or had a financial interest in.

ARTICLE XVIII **TRUST FUNDS**

The Employer agrees to become signatory to the Trust Agreements as amended establishing the Welfare, Pension, Apprenticeship, Skill Improvement and Safety and Benefit Funds of Local 137, 137A, 137B, 137C and 137R and said Employer hereby designates as its representatives on the Welfare, Pension, Apprenticeship, Skill Improvement and Safety and Benefit Funds of Local 137, 137A, 137B, 137C and 137R, the Trustees selected by the CONSTRUCTION INDUSTRY COUNCIL OF WESTCHESTER AND HUDSON VALLEY, INC. who are now serving as such, as well as the future whenever a vacancy occurs. The Trustees of the Trust Funds established shall not be regarded as the agents of the Association, the Employer or the Union.

ARTICLE XIX **BONDING**

Section 1. The Employer may at the discretion of the Trustees of the Funds be required to provide a Surety Bond to guarantee payment to the Welfare, Pension, Annuity, Benefit Funds, each Bond shall be made payable to the Trustees of the Pension, Annuity, Welfare or Benefit Funds in an amount to be determined by the Boards of Trustees. Further, he or it may at the discretion of the Trustees be required

to provide a Surety Bond to Guarantee payment to the Apprentice Training Fund, which Bond shall be made payable to the Trustees in an amount to be determined by the Boards of Trustees.

Section 2. Whenever an Employer is in default upon payment to the Welfare, Pension, Annuity, Benefit and/or Apprentice Training Funds, referred to herein and reasonable notice of such default is given to the Employer, the Union may remove its members from the work of such Employer. All other provisions of this Agreement notwithstanding, if such men are removed, remain on the work-site during the regular working hours, they shall be paid for the lost time not to exceed three (3) day's pay.

Section 3. The Trustees of the respective Welfare, Pension, Annuity, Apprenticeship and Benefit Funds and/or their representatives shall have the right on reasonable written notice to the Employer to examine the pertinent books and records of the Employer for the purpose of ascertaining if the Employer is paying the proper contributions to the Funds.

ARTICLE XX **STEWARDS**

Section 1. The Employer recognizes the right of the Union to have Business Agents, at their discretion, designate Stewards, and working conditions and hours shall not be less than the conditions of the Stewards of any other trade employed by the Employer.

Section 2. He shall be given ample time to perform the duties assigned by the Union without the loss of pay.

Section 3. The Stewards' duties include the following:

- (a) Examination of dues books of all Employees to determine their good standing as provided herein.
- (b) Reporting violations and/or grievances to the Business Agent at once.

Section 4. The Steward shall not be discriminated against for enforcing the terms of this Agreement, or the rights of any Employee or the Union.

Section 5. The Employer will submit to the Steward weekly a report of the number of hours worked and the wages paid to each of the men covered by this Agreement.

Section 6. The Steward shall be the last man off the job at the discretion of the Business Agent, and he shall not be discharged without the consent of the Union.

Section 7. Business Agents and authorized representatives of the Union, or the Welfare, Pension, Annuity, Apprenticeship and Benefit funds shall have access to the work at all times during working hours.

ARTICLE XXI SAFETY

Section 1. It is hereby mutually agreed that both parties to this Agreement will jointly arrange for safety meetings from time-to-time during working hours for the purpose of preventing accidents.

Section 2. Employees while on the job shall be protected by the Employer from falling material, inclement weather and/or anything detrimental to life or health.

Section 3. The Employees shall not be required to operate unsafe or defective operating equipment and they shall continue to be employed while the equipment is being repaired and made safe. All safety requirements of federal, state and local law shall be complied with at all times.

Section 4. The Employer shall supply hard hats, goggles, rain-gear, boots when required. A first aid kit shall be provided and kept available for use at all times on the job. Article XXI, "Section 4" will be complied with at all times in its entirety.

Section 5. Under no circumstances will an Employee be required or assigned to engage in any activity involving dangerous conditions of work or danger to person or property or in violation of an applicable statute or court order, or governmental regulation relating to safety of person or equipment. No crane will be equipped with more boom and/or counterweight, nor with any equipment or attachments not specifically recommended, unless approved by the Safety Inspector of the New York State Department of Labor, and/or by any other legally constituted authority. All machines will have enclosed cabs and/or curtains, seat belts, roll bars, standard equipment heaters and the appropriate fans -- (summer or winter).

ARTICLE XXII WORK RULES

A set of working rules follow and these are a part of this Agreement.

Rule 1. No overtime shall be worked without reasonable notice to the Employees.

Rule 2. (a) Crushers shall be operated by an Apprentice operator or a Legacy operating engineer.

(b) The Employer agrees to provide uniforms and laundry service for same, to each mechanic and utility man as is presently supplied, but in no event less than twice weekly. All costs of supply and service shall be borne by the Employer.

Rule 3. During a work shift, an Employer may jump an operating engineer no more than three (3) times per day.

Rule 4. There shall be suitable shelter provided for Employees of our craft and necessary heat must be furnished. Clean washroom and toilets will be maintained by the Employer.

Rule 5. (a) When material is being drawn from the plant and the hoppers do not need to be replenished whether before 6:30 A.M., during lunch period or after 3:00 P.M., the Employee filling the hoppers of the plant will not be employed. In any event a hopper needs to be replenished or is replenished before 6:30 A.M., during lunch period or after 3:00 P.M. the Employee filling the hoppers of the plant shall be employed and shall receive the appropriate over time rate.

Rule 6. Supervision of Employees covered under this Agreement will be limited to the owner, his Superintendent, or Foreman provided he is not a member of another bargaining unit, the Master Mechanic and/or the Operator Foreman.

Rule 7. A Mechanic shall be employed when it's required.

Rule 8. There shall be a ten (10) minute coffee break in the morning each day.

Rule 9. An Employer having more than one plant in operation in various locations under different corporate entities shall employ a Mechanic or if the aggregate of crane operators and shovel operators at the several plants or locations total five (5) or more, in those cases where the plants are jointly owned or operated by the same parties in interest.

Rule 10. The Employer agrees that for safety reasons no employee will be allowed to work alone. It is understood that management personnel can be counted for this rule.

ARTICLE XXIII GRIEVANCE PROCEDURES

Section 1. There shall be no stoppage of work either by strike or lockout because of any complaints, grievances or disputes arising out of the meaning and application of this Agreement. All such matters shall be adjusted between the representatives of the Employer and the Business Representative of the Union. Should the parties be unable to adjust the grievances satisfactorily, and a question as to the meaning and application of the Agreement is involved, then the matter may be submitted to an Arbitration Board upon written request to the aggrieved party. The Arbitration Board shall be composed of two (2) representatives appointed by the Employer and two (2) representatives appointed by the Union and shall meet within 48 hours of grievance notification.

Section 2. Should the Arbitration Board fail to reach a decision, within three (3) business days from the date of the Board's decision, the party invoking the grievance procedure shall notify the American Arbitration Association immediately to appoint an arbitrator under AAA's expedited arbitration procedures. The decision of the arbitrator

shall be final and binding upon both parties and may be entered as a final decree or judgment in the Supreme Court of the State of New York or in a court of appropriate jurisdiction in any state where such decision shall be rendered. The costs of the arbitration, including the arbitrator's fee, shall be borne equally by the Employer and the Union. Service of any document or notice referred to herein or service of any notice required by law in connection with the arbitration proceeding may be made by facsimile or email along with confirmation thereof by Overnight Mail Delivery. Service upon the Employer shall be made upon the individual Employer to the dispute along with the Construction Industry Council.

Section 3. This Article is not, in any manner, meant to prohibit or restrict the Union's right to strike or withhold services upon the expiration of this Agreement.

Section 4. No employee shall have the right to institute any action, arbitration or proceeding under this Agreement. Discipline up to and including discharge will only be for just cause.

Section 5. Delinquent contributions owed to the Local 137 Trust Funds as identified in this Agreement are not subject to arbitration. Issues of employee health and safety which could result in serious on the job worker injury must be addressed immediately.

ARTICLE XXIV ENGINEERING, HEAVY AND HIGHWAY CONSTRUCTION

It is hereby agreed that Engineering, Heavy and Highway Construction work is a specialized branch of contracting work, separate and distinct from Concrete Plants and Yards. This Agreement is for Concrete Plant and Yard work. Whenever the Employer engages in Engineering and Heavy and Highway Construction work, the parties agree to be bound by the terms of the Agreement and any amendments thereto entered into by and between Associated Contractors of Westchester County, Inc. or their successors in interest and the International Union of Operating Engineers Locals 137, 137A, 137B, 137C and 137R in effect at the time.

ARTICLE XV BUILDING CONSTRUCTION WORK

It is hereby agreed that Building Construction work is a specialized branch of contracting work, separate and distinct from Concrete Plants and Yards. Whenever the Employer engages in Building Construction work the parties agree to be bound by the terms of the Agreement and any amendments thereto entered into by and between the Building Trades Employers Association of Westchester and Putnam Counties, Inc., or their successors in interest, and the International Union of Operating Engineers, Locals 137, 137A, 137B, 137C, 137R in effect at the time.

ARTICLE XVI
SUB-CONTRACTING

Section 1. The Employer agrees that neither they nor any of their subcontractors on the job site will subcontract any work of the type covered by this Agreement to be done at the site of construction except to a person, firm or corporation, party to or signatory to an appropriate current labor agreement with this Local Union, provided that nothing herein shall apply in any case where the Employer is required by federal, state or municipal law, or by the terms of any contract, grant, award or invitation to bid issued there under, to employ, contract with or subcontract to minority enterprises or persons.

Section 2. A sub-contractor is designated as any person, firm, partnership, self-employed person or corporation who agrees under contract, oral or written with the Employer or their subcontractor to perform any part or portion of the work covered by this Agreement including the operation of equipment, performance of labor and installation of materials.

Section 3. (a) The Employer shall be responsible and liable for the payment of all sums of money required by any of the terms of this agreement incurred by any subcontractor arising out of the work performed by the subcontractor for the employer, provided, however, there is compliance with subdivision (c) hereunder.

(b) Employer agrees to notify the Administrator, in writing, of the several Fringe Benefits Funds, of the identity (including full and correct office and post-office address) of any and all subcontractors on any job or project.

(c) The Administrator of said Funds shall notify the Employer, in writing, no later than 90 calendar days after the date on which the said subcontractor should have made payment to said Funds or the Union by any/or all subcontractors used by the Employer. Such notice by said Administrator shall constitute notice by all.

(d) If the said Administrator shall have failed to notify the Employer within the specified time limitations specified in sub- paragraph (c) hereof, the Employer shall be relieved of liability for the Sub-contractor's delinquent payments to the applicable Fund for the period of delinquency prior to notification.

Section 4. An owner of equipment renting his/her machine to a contractor or employee shall be governed by the terms and conditions of this Agreement. An Employer when placing his/her equipment out on rental or leasing equipment from an owner of equipment or another Employer agrees to be responsible for the wages - all fringe benefits and working conditions of Employees operating said equipment. Excluded from this Section 4 is a "bare rental," equipment rented without an operator.

ARTICLE XXVII
MISCELLANEOUS

Section 1. This Agreement and all its terms and provisions are based on an effort and

in the spirit to bring out more equitable conditions in the construction industry, and the language herein shall not be construed as evading the principles or intention of this Agreement.

Section 2. It is further mutually understood and agreed that this Agreement shall apply to all Employees performing work covered under this Agreement at the Employers' permanent and temporary facilities.

Section 3. This Agreement shall be applicable to and binding upon any successor or assigns of the Employer that may engage in the operation covered under the terms hereof.

Section 4. It is mutually agreed that the manning requirements and wage rates on equipment new to this area and/or not listed in this Agreement that would come under, the jurisdiction of the International Union of Operating Engineers, shall be subject to negotiations and all other provisions of this Agreement not withstanding this section, shall not be subject to arbitration.

Section 5. If the Union requests a pre-job conference prior to commencement of work, it shall be held. Refusal by the Employer to attend this conference shall be a violation of this Agreement not subject to Arbitration.

Section 6. It is further mutually understood and agreed that in the event of any alleged violation of this Agreement liability shall be limited to the parties to the dispute.

Section 7. It shall not be a breach of this contract or cause for discharge or other discipline for any Employee to refuse to cross a picket line.

Section 8. The Employer shall compensate or replace any and all tools of mechanics and maintenance men that may be lost, stolen or damaged on the job. When requested by the Employer, each Mechanic and Maintenance Man shall prepare and file an inventory of tools which he owns and which he has in his possession and used on the job.

Section 9. In yards where a mechanic is not steadily employed, the Employer shall furnish all tools.

Section 10. The Employer agrees to hold Employees covered hereunder harmless from claims of third parties from accidents occurring in the course of the Employees' employment. Further the Employer shall assume all costs, legal and otherwise in connection therewith; to the extent such claims are not covered by the Employers' public liability insurance.

ARTICLE XXVIII UTILITY MAN

There shall be employed in each of the plants and yards of the Employer an additional Employee to be known as a Utility Man, upon the request of the Employer. His duties

shall include the greasing and oiling of cranes and shovels, etc., the operation of cement pumps, the helping of maintenance men and such other duties as may be assigned by the Employer that do not conflict with other provisions of this Agreement.

ARTICLE XIX SEVERANCE PAY

All Employees whose services are terminated for involuntary reasons, after ten (10) or more years of service with the Employer, except those discharged for cause, shall be paid severance pay upon the understanding that they shall have no claims against the company for any reasons, as follows:

- (a) For each year of service, the Employee shall be paid one (1%) percent of his annual gross wages limited to a forty hour per week limit for each year of employment;
- (b) In computing the sum payable in the event termination occurs prior to the completion of any twelve (12) month period, such amount earned shall be prorated to the nearest quarter.
- (c) Payment of all severance pay shall be made in a lump sum at the time of termination.

ARTICLE XXX VALIDITY

Any provision of the Agreement adjudged to be unlawful by a court of competent jurisdiction shall be treated for all purposes as null and void, but all other provisions of the Agreement shall continue to be in full force and effect except as provided herein. In the event that the Union Security Provisions are invalid as a matter of law, either part to this Agreement may elect to re-open this Agreement for the purpose of negotiating a new Union-Security provision.

ARTICLE XXXI

The parties hereby ratify the acts of the Trustees of the Four Local 137 Employee Benefit Funds during the period of the Collective bargaining agreement hereby renewed, including a Local 137 Welfare Plan amendment which modifies the benefits under said Welfare Plan of a Retiree under the Local 137 Pension Plan who retires on and after May 31, 1984, so as to relate his benefit to the total amount contributed on his behalf to said Welfare Plan prior to his retirement.

ARTICLE XXXII MOST FAVORED NATIONS

Section 1. In the absence of approval by the Construction Industry Council, should the Union knowingly allow its members to work for a competitor of the Employer for wages and/or fringe benefits less than the amount set forth in this Agreement, or under conditions of work or manning less favorable than those established in this agreement;

then the wages, benefits and working conditions contained herein shall upon reasonable notice by the Construction Industry Council to the Union, be deemed changed to conform to the more favorable conditions permitted by the Union.

Section 2. This clause shall not apply to isolated emergency situations which may occur from time to time under unusual job conditions or when a special project agreement is established and made available to all signatory employers prior to bid.

ENGINEERS WAGE SCHEDULE
CONCRETE PLANTS AND YARDS

<u>GROUP 1</u>	8/4/2014	08/3/2015	08/1/2016
	per hour	per hour	per hour
Crane Operators	\$41.93	\$41.93	\$41.93
<u>Group 1A</u>			
Shovel	\$41.40	\$41.40	\$41.40
Crane all attachments			
Drag Line			
Derrick			
Back Hoe			
Dredges			
Cableway			
Loaders			
Scoopmobile			
Mechanical Loaders			
Ross Carrier Straddle Truck			
Quarry Master, Joy Heavyweight and Similar Equipment			
Flame Cutter & Similar Machines Operated by Engineer			
Koehring Scooper			
<u>GROUP II</u>	08/04/2014	08/03/2015	08/01/2016
	per hour	per hour	per hour
Mechanic	\$40.79	\$40.79	\$40.79
Dozer			
Letourneau & Similar Scrapers			
Crushers			
Conveyors, Bucket Elevators, Belts & Similar Equipment			
Pumps			
Compressors			
Graders			
<u>GROUP III</u>	08/04/2014	08/03/2015	08/01/2016
	per hour	per hour	per hour
Forklift	\$40.10	\$40.10	\$40.10

**ENGINEERS WAGE SCHEDULE
CONCRETE PLANTS AND YARDS (Con't)**

<u>GROUP IV</u>	08/04/2014 per hour	08/03/2015 per hour	08/01/2016 per hour
Plant Man	\$39.34	\$39.34	\$39.34
Hopper Man	\$39.15	\$39.15	\$39.15
Yard Man	\$38.94	\$38.94	\$38.94
Helpers	\$36.42	\$36.42	\$36.42
<u>GROUP V</u>	08/04/2014 per hour	08/03/2015 per hour	08/01/2016 per hour
Utility Man	\$31.69	\$31.69	\$31.69

Make one check payable to Local 137 Joint Funds for the following:

FRINGE BENEFIT SCHEDULE

	08/04/2014 per hour	08/03/2015 per hour	08/01/2016 per hour	
<u>WELFARE</u>	\$12.25	\$12.25	\$12.25	ALL FRINGES LIMITED TO 40 HOURS CAPPED AT 1800 HOURS PER YEAR
<u>PENSION</u>	\$4.29	\$4.29	\$4.29	ALL FRINGES LIMITED TO 40 HOURS CAPPED AT 1600 HOURS PER YEAR
<u>APPRENTICE</u>	\$.55	\$.55	\$.55	ALL FRINGES LIMITED TO 40 HOURS
<u>IAF</u>	\$.18	\$.18	\$.18	ALL FRINGES LIMITED TO 40 HOURS
<u>PAC</u>	\$.05	\$.05	\$.05	ALL FRINGES LIMITED TO 40 HOURS
<u>ANNUITY</u>	\$7.72	\$7.72	\$7.72	ALL FRINGES LIMITED TO 40 HOURS

SUPPLEMENTAL DUES CHECK OFF

	08/04/2014 per hour	08/03/2015 per hour	08/01/2016 per hour
<u>DUES</u>	\$ 1.70	\$ 1.70	\$1.70

DUES DEDUCTED FM WAGES ON ALL HOURS WORKED

ARTICLE XXXIII
DURATION

This Agreement shall continue in effect from August 4, 2014 through May 31 2017.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly subscribed by their duly authorized representatives as to this 4th day of August, 2014 and this Agreement shall be binding upon their successors and assigns:

EMPLOYER

By _____

By _____

By _____

INTERNATIONAL UNION OF OPERATING ENGINEERS

LOCALS 137, 137A, 137B, 137C, 137R

Pres. *A. Braccio*

Rec. Sec. *John McGill*

Bus. Mgr. *Jeffrey Laughlin*

The undersigned Employer doing business as _____ and having principle offices at _____

_____ has read and is fully familiar with all the terms and conditions of this Agreement - _____

_____ with the INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 137, 137A, 137B, 137C, 137R and agrees to adhere to and to be bound by all the terms hereof.

WESTCHESTER CONCRETE PRODUCERS ASSOCIATION

Ray Bore

