

NATIONAL MAINTENANCE AGREEMENT

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**NATIONAL MAINTENANCE AGREEMENT
MISSION STATEMENT**

**BUILDING A PARTNERSHIP OF
SAFETY, PRODUCTIVITY, QUALITY AND STRENGTH**

Since its inception in 1971, the National Maintenance Agreement(NMA) program has been administered under a system of tripartite governance and cooperation, with owners contractors and building trades craftworkers sharing equally in the responsibilities and rewards generated by the program.

Understanding that the programs viability is equal only to the sum of its parts, careful consideration has been given over the years to ensure that proper balance is maintained among the three partners in the NMA program. Such balance is necessary if the program is maintain its stated goal of "Building a Partnership of Safety, Productivity, Quality, and Strength."

In striving toward that goal, the NMA recognizes and addresses the following common concerns of the partners in the program:

- Safety in all phases of work
- No disruption of owners work
- Performance on schedule
- Cost effective and quality craftsmanship
- Productivity
- Flexibility
- A trained, available workforce
- Attainable work opportunities.
- Resolution process for job-site disputes

By recognizing, addressing and delivering on these concerns, the NMA program reflects a true partnership dedicated to providing the most effective tool for the performance of work in industrial construction maintenance.

The NMA program is administered and guided by the National Maintenance Agreements Policy Committee, Inc. The NMAPC is a joint committee of labor and management representatives committed to achieving the program's stated goals and satisfying the individual and collective concerns of the participants.

The NMAPC provides a guarantee to owners, contractors and craftworkers that the NMA program will continue to deliver dynamic leadership in addressing the realities of industrial construction maintenance, and that it will continue to provide a state-of-the-art delivery system for the performance of maintenance work. The NMAPC truly is designed to deliver a program of "Safety, Productivity, Quality and Strength."

ARTICLE I - RECOGNITION

1. The bargaining unit under this Agreement shall comprise the Union in behalf of the OPERATING ENGINEERS Employees of the Employer, now employed and employed in the future for maintenance, repair, replacement and renovation in various plants within the geographical jurisdiction of the INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO. This Agreement does not apply to general superintendents, superintendents, assistant superintendents, office and clerical employees, watchmen or other professional or supervisory employees as defined in the National Labor Relations Act, as amended.
2. It is agreed between the Union and the Employer that this Agreement is applicable to maintenance, repair, replacement and renovation work that is primarily within the recognized and traditional jurisdiction of the Union and shall be performed in accordance with the terms of this Agreement. It is further agreed that should the plant owner also award work to the Employer that is within the recognized and traditional jurisdiction of another union with which the Employer has a similar agreement for the performance of that work, then work assignments shall be made in accordance with Agreements and Decisions of Record, attested Agreements, established trade practice, or prevailing area practice.
3. The Employer is required to conduct a pre-job conference, including craft work assignments, for each project performed under the National Maintenance Agreement. It is the responsibility of the Employer to notify the appropriate Building Trades Council having jurisdiction, as well as all International Unions with which it is party to a National Maintenance Agreement of the time and place of the pre-job conference. A pre-job conference outline can be obtained from the NMAPC office and/or any participating International Union. Failure to comply with this section is a violation of this Agreement.
4. For short-term (less than 5 working days) or weekend projects, the Employer may contact the appropriate crafts via telephone, FAX and/or other electronic means, regarding work assignments. For projects of longer duration, the Employer shall convene a pre-job conference, upon sufficient notice so that all appropriate crafts have an opportunity to participate.
5. During the existence of the National Maintenance Agreement, there shall be no strikes, lockouts, work stoppages, or picketing arising out of any jurisdictional dispute. Work will continue as originally assigned, pending resolution of the dispute.

6. Since presently established jurisdictional dispute settlement procedures are not applicable to work covered by the Agreement, all signatory Unions and all signatory Employers stipulate that they will abide by the following procedures for the resolution of jurisdictional disputes:

a. A party challenging an assignment shall notify all affected parties, i.e. Unions and Employer as well as the NMAPC office, by telegram or FAX, within two (2) days of the time that a dispute occurs at the local level.

b. All disputes involving craft work assignments shall be referred to the International Unions with which the local unions are affiliated and they and the Employer shall have the opportunity to resolve the dispute.

c. Should the International Unions and the Employer fail to resolve the dispute within five (5) work days from the date they were notified of the dispute, then the matter shall be referred by telegram or FAX by any International Union or Employer directly involved in the dispute for arbitration to the Permanent Umpire, designated by the NMAPC, to resolve jurisdictional disputes under this procedure.

d. The Umpire will set and hold a hearing within seven (7) days of the referral to him. The Umpire shall notify the Employer and the appropriate International Unions by telegram or FAX of the place and time chosen for the hearing. A failure of any party or parties to attend said hearing without good cause, as determined by the Umpire, shall not delay the hearing of evidence or issuance of a decision by the Umpire. The time period set forth herein can be extended by mutual agreement of the parties in writing.

e. The Umpire shall issue his decision within three (3) days after the hearing ended. The decision of the Umpire shall be final and binding on all parties to the dispute. This action of the Umpire shall be predicated upon the particular facts and evidence presented regarding this dispute and shall be effective only on this particular job.

f. In rendering his decision, the Umpire first shall determine whether a previous decision or agreement of record between the parties to the dispute governs. If the Umpire finds that the dispute is not covered by an appropriate or applicable decision or agreement of record, he shall then consider whether there is an applicable agreement between the crafts governing the case. If no such agreement is in effect, the Umpire shall then consider the established trade practice and prevailing practice in the locality.

g. The Umpire is not authorized to award back pay or any damages for a mis-assignment of work. Nor may any party to this procedure bring an independent action for back pay or any other damages, based upon a decision of the Umpire.

h. Each party to the arbitration shall bear its own expense for the arbitration. The fees and expenses of the Umpire will be shared equally by the affected International Unions and the Employer.

i. The Employer shall not be responsible for disputes regarding work assignments made by its subcontractors. However, the Employer must ensure that its subcontractors, performing work

under the terms and conditions of the National Maintenance Agreement, follow the procedures of Art. I.

7. Employer recognizes the Union herein as duly constituted for the purpose of bargaining collectively and administering this Agreement for the members affiliated with the INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO.

ARTICLE II - UNION SECURITY

1. All employees covered by this Agreement and members of the Union now in t h e Employ of the Employer shall remain members in good standing in the Union during the term of this Agreement.

2. All employees hired by the Employer shall, as a condition of employment, become and remain members in good standing of the Union within 30 (thirty) days following the date of their employment.

3. Any employee, who at his/her time of employment is a member in good standing of any AFL-CIO Building Trades Union shall be considered in compliance with the Union Security Article in this contract so long as he/she maintains good standing in the Union.

4. On nuclear facilities it is agreed that applicants referred to the project under this Article shall be considered probationary employees until such time as they meet the owners' security requirements not inconsistent with State and Federal laws.

5. This provision shall not preclude such probationary employees' rights under Article VI relative to any grievance arising under any other section of this agreement.

ARTICLE III - NON-DISCRIMINATION

1. The Union and the Employer agree to abide by all Executive orders and subsequent amendments regarding the Civil Rights Act of 1964, pertaining to non-discrimination in employment, in every respect.

ARTICLE IV - SCOPE OF WORK

1. This Agreement covers all work assigned by the Owner to the Employer and performed by the employees of the Employers covered by this Agreement.

2. This Agreement does not cover work performed by the Employer of a new construction nature, in which event said work shall be done in accordance with existing building construction agreements.

3. The Union and the Employer understand that the Owner may choose to perform or directly subcontract or purchase any part or parts of the work necessary on the project with due consideration given to achieving the highest maintenance standards and harmonious working conditions possible. All subcontracting of work at any tier covered by this Agreement shall be limited to Employers signatory to this or other similar national maintenance agreements.

4. It is the intent of the parties that in-plant employees of the Owner will not be assigned to work directly with building and construction trades employees of the signatory Employer on the portion of the work assigned to the signatory Employer by the Owner. However, nothing in this Paragraph 4 will prevent the in-plant employees of the Owner from performing work not assigned to the signatory Employer while the building and construction trades employees of the Employer are present and working.

5. This Agreement shall have application only to the work location agreed upon between the Employer and the Union.

ARTICLE V - DEFINITIONS

1. Maintenance shall be defined as any work performed of a renovation, replacement, repair or maintenance character within the limits of a plant property, or other locations related directly thereto.

2. The word "repair," used within the terms of this Agreement and in accordance with maintenance, refers to work required to restore, by replacement of parts, existing facilities to efficient operating condition.

3. The word "renovation," used within the terms of this Agreement and in connection with maintenance, refers to work required to improve and/or restore, by replacement or by revamping, parts of existing facilities to efficient operating condition.

4. The word "replacement," used within the terms of this Agreement in connection with maintenance, refers to work required to modify, supplement or efficiently update existing facilities.

5. The term "existing facilities," used within the terms of this Agreement, is limited to a constructed unit already completed and shall not apply to any new unit to be constructed in the future, even though the new unit is constructed on the same property or premises.

6. In the event a dispute arises as to whether a work operation is new work or work falling within the scope of this Agreement, the matter shall be referred to the Work Scope Subcommittee of the National Maintenance Agreement Policy Committee, Inc.

ARTICLE VI - GRIEVANCES

1. All grievances shall be filed within 10 (ten) calendar days after the disputed event occurred. Unresolved grievances shall be appealed to the next

higher step within 10 (ten) calendar days after the meeting in the lower step. Settlement of grievances may be arrived at in any step of the grievance procedure, which settlement will be final and binding on the Union and Employer. *

Grievances, other than those pertaining to jurisdiction or general wage rates on any work covered by this Agreement shall be handled in the following manner:

Step 1. Between the Employer's Supervisor and the Local Union Steward at the job-site.

Step 2. Between the Business Representative and the Employer's Supervisor at the job-site.

Step 3. Between the International Union Representative and the Employer's Supervisor or Labor Relations Manager.

Step 4. If the parties are unable to effect an amicable settlement or adjustment of any grievance or controversy, it shall be submitted to the National Maintenance Agreements Policy Committee, Inc. for a decision to become effective immediately.

*(Parties should refer to NMAPC Grievance Procedures as amended June 12 & 13, 1990 at this step) 1.

Step 5. Failure of the National Maintenance Agreements Policy Committee, Inc. to reach a decision shall constitute a basis for a submittal of the question by the affected parties to the American Arbitration Association for a binding decision. In such instances, the affected parties to the dispute shall appoint an arbitrator to review the matter and render a binding decision. If the parties are unable to agree upon an arbitrator, the American Arbitration Association shall make the designation. The affected parties to the arbitration shall equally share in the costs, including printing and publication of any record of such arbitration.

2. The arbitrator shall only have jurisdiction and authority to interpret, apply or determine compliance with the provisions of this Agreement. Any award of the arbitrator shall be final and binding upon the Employer and the Union. A copy of the award by the arbitrator shall be submitted to the National Maintenance Agreements Policy Committee immediately after such award is rendered.

ARTICLE VII - UNION REPRESENTATIVE

1. A Steward shall be a qualified craftworker appointed by the Business Agent and confirmed in writing to the Employer. The Steward shall be the last employee to be laid off, provided he/she is qualified to perform the work that remains to be

done at the job. The Steward shall not be terminated or laid off, except as the last employee, without prior notice to the Union.

2. Local union representatives shall have reasonable access to jobs operated within the plant locations subject to Employer and owner regulations.

ARTICLE VIII - WAGES

1. Wage rates shall be those as set forth in the current Labor Agreement of the affiliated local union where such work is to be performed and shall be paid to all employees under the terms of this Agreement unless otherwise modified by the National Maintenance Agreements Policy Committee, Inc. Wages shall be paid weekly by check or other legal tender.

(1. NMAPC procedures as amended are in Appendix A in back of this agreement.)

2. When zone-type wage structures are provided for in local agreements and are otherwise applicable in the area of the project, the project for the purposes of this Agreement will be considered as if it was within the area of the base zone rate.

3. Where the Operating Engineers Local Union Building Agreement provides for a guaranteed work week on certain jobs or equipment, such guarantee shall be applicable under the terms of this agreement provided the job is of five (5) days or more duration, notwithstanding Article XII herein. Such guarantee shall not apply when the commencing week is less than five (5) work days or when the Operating Engineers are terminated during the work week. It is understood that those craftworkers receiving such guarantee may, "at the discretion of the employees," be required to remain on the job.

ARTICLE IX - BENEFITS AND OTHER MONETARY FUNDS

1. Welfare Funds, Pension Funds, Apprentice Training Funds and *other* monetary funds called for in the Local Union or District Council Labor Agreement, shall be paid in accordance with the Local Labor Agreement except that no funds shall be paid on a basis that exceeds the straight-time and overtime provisions of this Agreement.

2. The Employer agrees to be bound by and will sign all legally-constituted trusts which have been established between Local Unions of the OPERATING ENGINEERS and recognized bargaining agencies of contractors in the area.

3. Industry Advancement or Promotion Funds called for in the Local Labor Agreement may be paid at the discretion of the Employer.

4. Once an Employer is notified by certified mail, return receipt requested, or by telegram, FAX, or other electronic means, that he is delinquent in his contributions to the fringe benefit funds, apprenticeship fund, dues check-off or any other contractually required contribution, and does not respond positively by forwarding said contributions to the appropriate place of receipt within three (3) business days, the provisions of Article XXII shall not apply and the Union may

legally withhold services. However, it is understood that such action, consistent with Article XXII, does not allow said craft to establish any picket line.

ARTICLE X - COMPENSATION INSURANCE

1. For all employees covered by this Agreement; the Employer shall provide Workers' Compensation Insurance, Social Security and other protective insurance as may be required by law, and also furnish satisfactory proof of such to the Union.
2. In an effort to enhance the competitive position of the Employer and to provide greater work opportunities for members of the Union, the Employer and local unions are encouraged to negotiate and implement alternative dispute resolution procedures to resolve workers' compensation claims disputes when and where permissible and/or legal. Such alternative dispute resolution procedures when implemented will be final and binding on the parties and shall be made a part of the Agreement to the extent permitted by law.

ARTICLE XI - HOLIDAYS

1. For purposes of uniformity, the following holidays shall be observed and, if worked, shall be paid at the rate applicable in the appropriate local agreement, but not to exceed double time:

New Year's Day
President's Day (federal)*
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

2. If any of these listed holidays falls on Sunday, the following Monday shall be observed as the holiday; if any of the listed holidays falls on Saturday, the preceding Friday shall be observed as the holiday.
3. * President's Day (federal) may be considered a floating holiday and may be celebrated on an alternate day, if the affected participants to this Agreement within a specific Building Trades Council's geographical jurisdiction mutually agree to celebrate said holiday on another work day. Authorization must be obtained in writing from the NMAPC administrative office.

ARTICLE XII - MINIMUM PAY/REPORTING TIME AND CALL-INS

1. An employee who reports for work at the regular starting time and for whom no work is provided shall receive pay equivalent to two (2) hours at the applicable hourly rate, provided the employee at the Employer's discretion remains available for work. Any employee who reports for work and for whom work is provided shall be paid for actual time worked, but not less than two (2) hours. It will not be a violation of this Agreement when the Employer considers it necessary to shut down to avoid the possible loss of human life, because of an emergency situation that could endanger the life and safety of an employee. In such cases, employees will be compensated only for the actual time worked. In the case of a

situation described above where the Employer requests employees to remain available for work, the employees will be compensated for such time.. If a project is shut down because of weather, employees who report for work shall be paid actual time worked, but not less than two (2) hours. Procedures for prior notification of work cancellation shall be determined at the pre-job conference. The provisions of this Section are not applicable where the employee voluntarily quits or lays off or is out by reason of a strike.

2. A Call-in, which is defined as the notification to an employee to report for work by whatever means for work outside of his/her regular shift or on his/her regularly scheduled day(s) off or holiday, shall be paid in accordance with one of the following methods.

a. A Call-in prior to and continuous with an employee's normally scheduled shift shall be paid for, on the basis of hours actually worked prior to the scheduled shift, at the applicable overtime rate.

b. When an employee is called in to work at or after the established starting time on Saturday, Sunday, scheduled day off or holiday, the employee shall be paid not less than four (4) hours at the applicable overtime rate for that day, except when *his/her* call-in is prior to and continuous with the normal work hours.

c. Any Call-in not continuous with the employee's regular work shift will result in a minimum of four (4) hours pay at the applicable overtime rate.

ARTICLE- XIII—SUPERVISION

1. The designation, appointment and determination of the number of foremen and/or general foremen is the sole responsibility of the Employer. There is a requirement for initial supervision. However, the Employer shall not be unwarrantedly burdened with additional demands for supervision.

2. When established for a craft, one (1) top hourly craft supervisor (foreman and/or general foreman) shall be guaranteed 40 (forty) straight-time hours per week. The 40 (forty) straight-time hours guarantee applies to straight-time hours, and the accumulation of overtime hours may not be considered for the purpose of applying those overtime hours to the "guaranteed 40 (forty) hours" provision. The 40 (forty) hour guarantee provision shall apply on a per Employer, per craft, per shift basis. It is understood that the individuals receiving such guarantee may, at the discretion of the Employer, be required to remain on the job.

3. Such guarantee shall not apply when the first or commencing week of a job is less than 40 (forty) hours, or when the top hourly craft supervisor is terminated due to reduction-in-force or job completion.

ARTICLE XIV - TRAVEL AND SUBSISTENCE

1. No subsistence, travel allowance, mileage or pay for travel time will be paid to any employee covered by the terms of this Agreement.

2. If the Employer or his subcontractor voluntarily agrees to pay travel or subsistence monies to any craft working in the plant on maintenance, repair or renovation work, the OPERATING ENGINEER employees automatically will be

entitled to receive the applicable travel and subsistence provisions contained in their Local Labor Agreement.

ARTICLE XV - WORK HOURS PER DAY

1. Eight (8) hours per day shall constitute a day's work and 40 (forty) hours per week, Monday to Friday, inclusive, shall constitute a week's *work*. The regular starting time shall be eight (8) o'clock A.M., and the regular quitting time shall be 4:30 (four-thirty) o'clock P.M.; lunch time shall be 12 (twelve) o'clock noon to 12:30 (twelve-thirty) o'clock P.M.

2. When shifts are required, the first shift shall work eight (8) hours at the regular straight-time rate. The second shift shall work 7-1/2 (seven and one-half) hours and receive the equivalent of eight (8) hours pay at the employee's regular straight-time hourly rate plus \$.25. The third shift shall work seven (7) hours and receive the equivalent of eight (8) hours pay at the employee's regular straight-time hourly rate plus \$.50. A 30 (thirty) minute lunch period shall be mutually agreed upon by the Job Superintendent and the Union Representative and shall not be considered as time worked.

3. All time worked before and after the established work day of eight (8) hours, Monday through Friday, shall be paid at the appropriate overtime rate. All work commencing with the beginning of the established work day on Saturday shall be paid at the rate of time-and one-half. All work commencing with the beginning of the established work day on Sundays and/or holidays shall be paid at the rate applicable in the appropriate local agreement not to exceed double-time.

4. By mutual consent of the Employer and the Union, the starting and quitting times of any shift, including day work, may be changed for all or any portion of a particular job. For the purpose of this Article, the standard work day of eight (8) hours for the job or portion thereof to which any such change of starting time applies shall begin with such agreed starting time.

5. Employees shall be at their posts prepared to start work at the regular starting time.

6. If any other craft, employed by the same Employer or its subcontractor in the plant on maintenance, repair, renovation or replacement is receiving double-time wages in lieu of the time-and one-half wage rate as set forth in this Agreement, the OPERATING ENGINEER employees will automatically be entitled to the double-time rate of pay during the period that aforementioned crafts are employed.

7. Local Labor Agreement provisions regarding minimum number of days to establish shifts or shift starts are waived for work under this Agreement.

8. The Employer may establish a four-day 10-hour shift exclusive of the 30 (thirty) minutes unpaid lunch period at the straight-time wage rate. The starting time shall be between 7:00 A.M. and 8:00 A.M. Forty (40) hours per week shall constitute a week's work Monday through Thursday. In the event a job is down due to weather conditions, holiday or other conditions beyond the control of the Employer, then Friday may, at the option of the Employer, be worked as a make-up day at the straight time wage rate. If Friday is scheduled as a make-up day, a minimum of eight (8) hours will be scheduled and worked, weather permitting. Straight-time is not to exceed 10 (ten) hours a day or 40 (forty) hours per week.

Starting time will be designated by the Employer; the Union will be advised of the starting time. Prior to utilizing this provision on a site where it has not previously been approved, the Employer or the Owner may petition to implement this option by initially submitting its request to the NMAPC as stipulated in Article XXVIII. Such approval will then be incorporated as an addendum to this Agreement either for that specific site or may apply systemwide as in the case of an Owner's request.

- a. The Employer may establish two-four day 10-hour shifts at the straight-time wage rate Monday through Thursday. These shifts are exclusive of the 30 (thirty) minutes lunch period. The day shift shall work four days at 10 (ten) hours for 10 (ten) hours pay per day. The second shift shall work four days at nine-and-one-half hours for 10 (ten) hours pay plus the shift additive of \$.25 per hour. In the event the job is down due to weather conditions, or a holiday or other conditions beyond the control of the Employer, then Friday may, at the option of the Employer, be worked as a make-up day at the straight-time wage rate. Straight-time is not to exceed 10 (ten) hours per day or 40 (forty) hours per week. Prior to utilizing this provision-on-a-site-where it has not previously been approved, the Employer or the Owner may petition to implement this option by initially submitting its request to the NMAPC as stipulated in Article XXVIII. Such approval will then be incorporated as an addendum to this Agreement either for that specific site or may apply systemwide as in the case of an Owner's request.
- b. Employees who inform their Employer on Thursday that they do not wish to work a Friday make-up day will not be penalized.
- c. An employee who is referred for employment, whose work is scheduled for less than 40 (forty) hours of work (from the date of hire to date of termination), shall receive overtime pay for all hours worked in excess of eight (8) hours per day.

9. Since it is recognized that the standard workweek may not be appropriate or cost effective for some projects, other arrangements for hours of work can be considered. The Employer may establish flexible work schedules, such as a staggered work week and the like, by submitting its request to the NMAPC for approval as stipulated in Article XXVIII. The NMAPC in reaching a decision shall take into consideration the project schedule, manpower requirements, the geographic location of the project, owner's work schedule and other appropriate factors. Such approval will be incorporated as an addendum to this Agreement for that specific project.

ARTICLE XVI - TRANSPORTATION

1. At plant locations where private transportation is not permitted, the Employer shall furnish transportation that provides shelter from inclement weather from the gate to the job-site and back to the gate when said distance is 1/2 (one-half) mile or more. When transportation is required, the Employer shall transport the employees to the point where such employees were picked up not later than 10 (ten) minutes after the end of the shift. When employees are transported to the pick-up point later than 10 (ten) minutes after the shift, then overtime pay shall apply as provided under Article XV.

ARTICLE XVII - SAFETY

1. The employees covered by the terms of this Agreement shall at all times while in the employ of the Employer be bound by the safety rules and regulations as established by the owner, the Employer, this agreement, or applicable Safety Laws.

2. The parties to this Agreement do hereby recognize the need to provide a drug-free and alcohol-free workplace. The parties to the Agreement agree to comply with any mandated substance abuse program. In order to produce as safe a workplace as possible, it is understood and agreed that the Employer and the employees shall abide by the rules and provisions of the implemented substance abuse program which may include the following types of testing: pre-employment, reasonable suspicion, post incident, and random (where allowed by law). Any discriminatory practice under this Article shall be subject to the grievance procedure. All substance abuse programs shall be submitted to the NMAPC for distribution prior to implementation.

ARTICLE XVIII - APPRENTICES

1. The Union agrees that the needs of plant maintenance may warrant differing apprentice ratios than those established. The Employer and the Union agree that existing ratios will be utilized and may negotiate from time to time higher ratios as conditions warrant. Further, provided pre-apprentice classifications are recognized in an area, an Employer may employ pre-apprentice classifications for work customarily performed by the craft.

ARTICLE XIX - HIRING AND TRANSFER OF CRAFTWORKERS

1. The Employer agrees to hire craftworkers in any territory where work is being performed or is to be performed in accordance with the hiring procedure existing in the territory; however, in the event the Local Union is unable to fill the request of the Employer for employees within a 48 (forty-eight) hour period after such request for employees (Saturdays, Sundays and holidays excepted,) the Employer may employ craftworkers from any source. The Employer shall have the right to move qualified employees from one job assignment to another within the plant location where they are working.

2. The Employer shall determine the competency of all employees. The Employer shall determine the number of craftworkers required on the project and shall select any employee or employees working under the terms of this Agreement to be laid off regardless of membership or non-membership in the Union.

ARTICLE XX - GENERAL SAVINGS CLAUSE

1. Any provisions in this Agreement which are in contravention of any Federal, State, Local or County regulations or laws affecting all or part of the limits covered by this Agreement shall be suspended in operation within the limits to which such laws or regulations are in effect. Such suspension shall not affect the operation of any such provisions covered by this Agreement to which the law or regulation is not applicable. Nor shall it affect the operations of the remainder of the provisions of the Agreement within the limits to which such law or regulation is applicable.

ARTICLE XXI - CREW SIZE

1. The crew size shall be any number of craftworkers and supervision required to safely perform the work and shall be increased or decreased at the discretion of the Employer, except as provided in Paragraph 2.
2. Crew size listed in the local building agreement shall not be applicable except where the local agreement calls for an oiler to be assigned to a truck or crawler crane. Such Oiler shall be assigned in accordance with the terms of said Agreement but not on cranes under 25 (twenty-five) tons.

ARTICLE XXII - LOCKOUT AND WORK STOPPAGE

1. During the term of this Agreement, there shall be no lockout by the Employer and no strikes, picketing, work stoppages, slowdowns or other disruptive activity for any reason by the Union or by any employee. Failure of the Union, local union or employee to cross any picket line, not sanctioned by the National Building and Construction Trades Department, at the Employer's project site is a violation of this Article.
2. In the event that a local or area collective bargaining agreement expires and a subsequent work stoppage ensues, the Employer and his-employees will continue to work, because the intent of this provision is to allow maintenance work to continue as a benefit to the client. The wages and fringe benefits in the expired local collective bargaining agreement, or, as approved by the NMAPC, Inc., will remain in effect for all work covered under the terms of this Agreement until wages and fringe benefits are agreed upon and become effective for the recognized bargaining agency of the local contractors and the affected union.
3. Sections 1 and 2 of this Article shall not apply, if the Employer signatory to this National Maintenance Agreement is a member of the current local negotiating committee, or if said signatory Employer actively participates in local negotiations. In such cases, when a local collective bargaining agreement expires, the affected union may withhold services from said Employer, but shall not interrupt the work of other crafts. Moreover, said Employer shall have the right to request in writing to the appropriate International that Section 3 of this Article be waived in order to allow the Employer to participate in local negotiations. The International has the sole responsibility to grant such waiver and will communicate its decision in writing both to the Employer and affected Owner(s).
4. The Union and its applicable local union shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity which violates this Article and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activity which violates this Article. Any employee who participates in or encourages any activity which violates this Article shall be subject to disciplinary action, including discharge. If justifiably discharged for the above reasons, the employee shall not be eligible for rehire on the same project for a period of not less than 90 (ninety) days. Further, if the union(s) are unable to provide qualified replacements for those employees who are in violation of this Article by the beginning of the next shift, the Employer is free to hire from any source.

5. Neither the International Union nor its local union shall be liable for acts of employees for which it has no responsibility. The International Union will immediately instruct, order and use its best efforts to cause its local union to cease any violation of this Article. If it complies with this obligation, the International Union shall not be liable for unauthorized acts of its local union. The principal officers of the local union will immediately instruct, order and use their best efforts to cause the members of their local union to cease any violation of this Article. If it complies with this obligation, the local union shall not be responsible for unauthorized acts of employees it represents.

6. In the event of any work stoppage, strike, picketing or other disruptive activity in violation of this Article, the Employer, at his discretion and without penalty, may suspend all or any portion of the project work affected by such activity.

7. Any Union or local union which initiates, participates in, or supports a work stoppage, strike, picketing or other disruptive activity in violation of this Article agrees as a remedy for said violation to pay liquidated damages in accordance with Section 8h of this Article.

8. In lieu of, or in addition to, any other action at law or equity, a party or the National Maintenance Agreements Policy Committee may institute the following procedure when a violation of this Article is alleged, after the other parties and the National Maintenance Agreements Policy Committee have been notified of the violation:

a. To invoke the procedure, a party or the National Maintenance Agreements Policy Committee, shall notify _____ who shall be the permanent Arbitrator under this procedure. In the event that the permanent Arbitrator is unavailable at any time, the invoking party shall notify _____, who is the alternate Arbitrator. Notice to the Arbitrator shall be by telegram or FAX, with copies of the notice by telegram or FAX to the other parties, and the National Maintenance Agreements Policy Committee.

b. Upon receipt of said notice the Arbitrator shall schedule and hold a hearing within 24 (twenty-four) hours if the invoking party contends that the violation still exists.

c. The Arbitrator shall notify the parties by telegram or FAX of the place and time he has chosen for the hearing. The hearing shall be completed in one session. A failure of any party to attend the hearing shall not delay the admittance of evidence or issuance of an Award by the Arbitrator.

d. The sole issue at the hearing shall be whether or not a violation of this Article has in fact occurred. The Arbitrator's Award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without an Opinion. If any party desires an Opinion, one shall be issued within 15 (fifteen) days, but its issuance shall not delay compliance with, or enforcement of, the Award. The Arbitrator may order cessation of the violation of this Article, and such Award shall be served on all parties by hand, telegram or FAX.

ARTICLE XXIII - MANAGEMENT CLAUSE

1. In the exercise of its functions of management, the Employer shall have the right to plan, direct and control the operation of all work; hire employees and supervision; direct the working forces; assign employees and supervision to their jobs; discharge, suspend or discipline for proper cause; transfer, promote or demote employees and supervision; lay off employees and supervision because of lack of work or for other legitimate reasons; require employees and supervision to observe the Employer's rules and regulations not inconsistent with this Agreement; regulate the use of all equipment and other property of the Employer; decide the amount of equipment to be used, the number of craftworkers needed, and shall be free to contract work anywhere and shall decide the methods of work and the source from which material and equipment is obtained; provided, however, that the Employer will not use these rights for the purpose of discrimination against any employee. These provisions do not prohibit the Union's right to the peaceful exercise of Article VI above, if in its judgement the spirit and intent of this Agreement has been violated.
2. Whenever possible and where circumstances do not prevent the Employer's doing so, the Employer will use items manufactured in the USA.

ARTICLE XXIV - PARTNERING

1. As manifested in the Mission Statement, the NMA program is based on its continual commitment to improve the partnering and communication between owners, union contractors and union building trades craftworkers. To further the goal of better dialogue and expedited problem solving, the NMA program encourages the development of local tripartite committees for a specific project or area that are empowered to establish lines of communication, seek solutions to unique jobsite needs, and suggest methods and ways to continuously improve safety, productivity, and quality.
2. The initial establishment of a local committee must be implemented through the NMAPC administrative office. The NMAPC office will provide the framework and oversight for effective partnering to enhance safety, productivity and quality.

ARTICLE XXV - WELDING CERTIFICATION

1. The union agrees to arrange with the Employer to pre-test welders at a mutually agreeable time and place. Such testing will be done without compensation, except that welders passing a certification test will be compensated for actual time required to take such test which shall not exceed four (4) hours pay upon his/her first employment with that contractor, provided such employee remains at work on the job at least five (5) working days, or in the case of jobs of less than five (5) working days, for the duration thereof.
2. In instances where a participating International is party to a program to provide welder certification and/or maintenance of welder certification records whose objective is equal to this Article, then such program will be applicable under this Agreement.

ARTICLE XXVI - REPORTING REQUIREMENTS - ADMINISTRATIVE FEES

1. The Employer signatory to this agreement shall report all man-hours performed under this agreement on a quarterly basis or at such times as deemed necessary by the National Maintenance Agreements Policy Committee, Inc. The report shall include the sum total of man-hours performed at each location for each quarterly reporting period. Each location shall be reported separately on forms furnished by the National Maintenance Agreements Policy Committee.
2. The Employer shall remit an annual administrative fee in such an amount deemed necessary by the National Maintenance Agreements Policy Committee, Inc. to defray the costs of administering and operating the program. Administrative fees shall be payable in accordance with the terms stipulated on the NMAPC, Inc. Administrative Report Form.
3. As a party to this agreement and participant in the program, the Employer acknowledges its obligation to remit the annual administrative-fee to the National Maintenance Agreements Policy Committee, Inc. In the event the Employer fails to remit such fee after demand for timely payment, the Employer consents to the jurisdiction of the courts of the Commonwealth of Virginia in any action brought by the National Maintenance Agreements Policy Committee, Inc., to collect the fee. The Employer further agrees that it will be liable and responsible for any costs of collection, including reasonable attorneys' fees and court costs incurred in such action by the National Maintenance Agreements Policy Committee, Inc.

ARTICLE XXVII - ADMINISTRATIVE PROCEDURE

1. Extensions of this Agreement shall be on a location-to-location basis and shall be sought for each location. Employers awarding work to a sub-contractor must be sure that the subcontractor has applied for the National Maintenance Agreement(s) and is in possession of them with permission to use them at the time of award. Pre-job conferences shall be required for all work performed under this Agreement as stipulated in Article I.
2. This Agreement is between the Employer and the International Union only. The only intermediary or administrative body for this Agreement is the National Maintenance Agreements Policy Committee, Inc. Revisions to this Agreement shall be made only by majority vote of the National Maintenance Agreement Policy Committee, Inc.
3. This Agreement is a stand-alone Agreement and none of the provisions in any local, regional/area or national collective bargaining agreement shall apply, unless specifically incorporated in this Agreement.

ARTICLE XXVIII - ADDENDA TO NATIONAL MAINTENANCE AGREEMENT

1. Addenda to this Agreement which are required to place the Employer in a more competitive position or address the Owner's requirements may be established by majority agreement of the signatory International Unions comprising the NMAPC. Such Addenda shall be reduced to writing and shall be attached hereto and made part of this Agreement for that project.

2. The Employer or Owner shall submit its request in writing to the NMAPC outlining the various site requirements that necessitate such approval

ARTICLE XXIX - DURATION OF AGREEMENT

This Agreement becomes effective, _____ and shall continue in effect until terminated by 90 (ninety) day's written notice from either party to the other. Changes may be made at any time by mutual consent.

The parties agree to revisions to this Agreement which are formally approved by the National Maintenance Agreements Policy Committee, Inc., and of which they are notified in writing by the Committee.

For the International Union of
Operating Engineers AFL-CIO

For the Employer

NATIONAL MAINTENANCE AGREEMENT
ARTICLE VI GRIEVANCES

I. All Grievances shall be filed within ten (10) calendar days after the complained-of event arose. Grievances shall be appealed to the next higher step within ten (10) calendar days after the meeting in the lower step. Settlement of grievances may be arrived at in any step of the grievance procedure which will be final and binding on the Union and Employer.

Grievances, other than those pertaining to jurisdiction or general wage rates on any work covered by this Agreement shall be handled in the following manner:

Step 1. Between the Employer's Supervisor and the Local Union Steward at the job site.

Step 2. Between the Business Representative and the Employer's Supervisor at the job site.

Step 3. Between the International Union Representative, and Employer's Supervisor or Labor Relations Manager.

Step 4. If the parties are unable to effect an amicable settlement or adjustment of any grievance or controversy, it shall be submitted to the National Maintenance Agreements Policy Committee, Inc., for a decision to become effective immediately.

Step 5. Failure of the National Maintenance Agreements Policy Committee, Inc., to reach a decision shall constitute a basis for a submittal of the question by affected parties to the American Arbitration Association for a binding decision. In such instances, the affected parties to the dispute shall appoint an arbitrator to review the matter and render a binding decision. If the parties are unable to agree upon an arbitrator, the American Arbitration Association shall make the designation. The affected parties to the arbitration shall equally share in the costs, including printing and publications of any record of such arbitration.

2. The arbitrator shall only have jurisdiction and authority to interpret, apply or determine compliance with the provisions of this Agreement. Any award of the arbitrator shall be final and binding upon the Employer and the Union. A copy of the award by the arbitrator shall be submitted the National Maintenance Agreements Policy Committee as soon as possible after such award is rendered.

APPENDIX A
GRIEVANCE PROCEDURES
AS AMENDED
JUNE 12 & 13, 1990

**NATIONAL MAINTENANCE AGREEMENTS POLICY
COMMITTEE GRIEVANCE PROCEDURES**

Over the 18 years since the National Maintenance Agreement was first developed, the number of employers utilizing the NMA has grown substantially. With more than 50 million man-hours of work now performed annually under the terms of the NMA, the volume of grievances presented to the National Maintenance Agreements Policy Committee has also grown. As a result, the Committee recognizes the need to establish more formal guidelines for the expeditious and appropriate consideration of grievances under Article VI, of the Agreement.

The NMAPC has the sole authority to interpret the terms of the National Maintenance Agreement. The decisions of the Committee constitute final and binding policy determinations. Accordingly, the parties should consult the book of the Committee's decisions to see whether the Committee has already ruled on any policy issue raised by a grievance.

Before a grievance shall be considered by the Committee, the parties must comply with the procedures set forth in Article VI. All grievances must be filed within ten (10) calendar days after the complained-of event arose. Grievances shall be appealed to the next highest step within ten (10) calendar days after the meeting in the lower step, although the parties may, by mutual agreement in writing, waive this time limit. This ten (10) -day time limit applies only to Steps 1 through 3 of the grievance procedure. Grievances submitted to the Committee at Step 4 should be submitted as soon as possible, and must be received no less than fourteen (14) days prior to the next scheduled meeting of the Committee to ensure consideration at that meeting. Settlement of grievances may be arrived at in any step of the grievance procedure which shall be final and binding upon the parties, but any such settlement shall not establish any precedent or have any impact on NMAPC policy.

The steps in consideration of any grievance shall be: first between the employer's supervisor and the Local Union steward at the job site; second, between the business representative and the employer's supervisor at the job site; third, between the International Union representative and the supervisor or Labor Relations Manager.

Only where the parties have followed the above procedure and have failed to reach an amicable settlement or adjustment at any lower step shall the grievance be submitted to the Committee for consideration. It shall be the burden of the party pursuing the grievance to ensure proper compliance with the previous steps of the grievance procedure.

Any grievance submitted to the Committee must be filed on the NMAPC grievance form, and must include a statement of the procedural history of the grievance verifying that the parties have complied with the lower steps of the grievance procedure and have been unable to effect a settlement. The grievance must also include a concise statement of procedural issue(s), if any; a concise statement of substantive issue(s); reference to specific applicable provisions of the Agreement; a brief statement of the facts; a short statement of the rationale why the grievance should be sustained; and a request for specific remedy. The party submitting the grievance shall forward a copy to the opposing party(s) at the same time the grievance is sent to the Committee.

Upon receipt of a copy of the grievance from the administrative office, the opposing party(s) shall have ten (10) days to file its response with the NMAPC, with a copy to the party submitting the

grievance. If a party fails to submit a position, the Committee shall proceed to consider the dispute nonetheless, and to render a decision. All decisions of the Committee shall be final and binding, and shall not be subject to any appeal.

Consideration by the Committee of a grievance shall follow a two-step process in order to expedite the Committee's work:

1. Administrative Review: Once a grievance is received by the NMAPC Administrative Office, it will be reviewed by staff based on three general guidelines. The procedure for Administrative Review will involve an examination of grievances on the basis of the following guidelines:

- a. Is the issue covered by language contained in the National Maintenance Agreements?
- b. Is there an NMAPC policy decision that specifically addresses the issue in dispute?
- c. Does the dispute present an issue of first impression that is not covered by language in the Agreements or an NMAPC policy decision?

After Administrative Review, the staff shall make a recommendation to the Grievance Review Subcommittee for consideration. If the Administrative Review finds that the issue in dispute is covered under guidelines a and/or b, then a recommendation to the Subcommittee will be to refer the grievance back to Step 3 for proper resolution based upon the language in the Agreements and/or an NMAPC policy decision.

Those grievances which fall into the third category will be referred to the NMAPC Labor-Management Committee for consideration in accordance with Step 4 of the Grievance procedure.

2. Grievance Review Subcommittee: This Subcommittee will function as a grievance screening forum for Step 4 disputes through a review of Administrative recommendations based on the three (3) guidelines set forth above. The Grievance Review Subcommittee will consist of the following: two (2) NMAPC management representatives and two (2) management alternates; two (2) NMAPC labor representatives and two (2) labor alternates; and one (1) NMAPC staff, with three representatives making a quorum provided that at least one (1) representative each from labor and from management are present. The Subcommittee meets on a monthly basis or as needed. Subcommittee meetings are held at the NMAPC Administrative Offices, office of a participating International Union or via teleconference.

All recommendations of the Grievance Review Subcommittee must be referred to the NMAPC Labor-Management Committee for consideration. As previously noted, those disputes which are covered by specific language of the National Maintenance Agreements and/or an NMAPC policy decision will be recommended for referral back to Step 3 for proper resolution. Those disputes for which there are no specific guidelines will be referred to the NMAPC Labor-management Committee for proper resolution under the Step 4 proceedings. Disputes involving discharges, productivity or absenteeism may be referred to the appropriate parties for processing directly to Step 5 of the grievance procedure.

Thus, the Grievance Review Subcommittee will propose the following recommendations to the NMAPC Labor-Management Committee for consideration;

- a. Remand grievance back to Step 3 for resolution, along with a notification of the next scheduled NMAPC Labor-Management Committee meeting where the dispute could be heard under Step 4 in the event that the parties cannot resolve the matter on remand;
- b. Refer directly to Step 5 for resolution; or
- c. Refer to the NMAPC Labor-Management Committee for resolution under Step 4.

Under these procedures, the NMAPC Labor-Management Committee may authorize the Grievance Review Subcommittee to directly refer grievances to either Step 3 or Step 5, without review of each such referral by the Labor-Management Committee. This is to ensure that grievances are referred to the appropriate next step in the grievance procedure in a timely manner, without having to wait until the next scheduled Labor-Management Committee meeting which would, in some cases, result in weeks or months of delay.

Further, the NMAPC Labor-Management Committee may, in its discretion, empower the Grievance Review Subcommittee to act on grievance between the meetings of the NMAPC Labor-Management Committee, with the full authority of the Labor-Management Committee. This will ensure to all participants a more expeditious consideration of outstanding disputes. In so delegating its authority, the NMAPC Labor-Management Committee may establish specific guidelines and instructions similar to those referred to in Section 1 above to guide the Grievance Review Subcommittee in its actions.

These revised guidelines for grievance procedures under the National Maintenance Agreements have streamlined the consideration of many disputes, allowing for quicker resolution of outstanding issues. As always, the National Maintenance Agreement Policy Committee remains the only body with authority to interpret the terms of the National Maintenance Agreement. By establishing these new grievance procedures, the National Maintenance Agreement more effectively serves the needs of employers, workers and their unions, and the entire industry.

GRIEVANCE FORM FACT SHEET*
(Pages 1 & 2 must be completed for submission to the)
National Maintenance Agreement Policy Committee

Party filing grievance

_____ vs _____

Project Information:

Client/Location: _____

Date grievance occurred: _____

Applicable agreement provisions allegedly violated (be specific): _____

Applicable NMAPC policy decision if any): _____

Brief statement of facts:

Remedy sought:

Has the opposing party been forwarded a copy of this grievance:

Yes ___ No ___ Date _____

Individual submitting: _____

Title: _____ Address: _____

(Phone number) _____ FAXNo.: _____

*Copies of the Grievance Form Fact Sheet may be obtained from the
respective participating International Unions or NMAPC Administrative Office.

Grievance Meetings

Briefly state in the space provided the following pertinent facts:

Date of meeting: whether in person or telephonic; location of meeting, if appropriate; those in attendance, briefly state the issues of discussion and if any agreement or consensus reached:

Step 1 (date)_____Location_____

Step 2 (date)_____Location_____

Step 3 (date)_____Location_____

(Attach Supporting Documentation)