

**AGREEMENT**

**between**

**THE TEST BORING ASSOCIATION**

**and**

**THE DISTRICT COUNCIL OF NEW YORK  
CITY AND VICINITY OF THE UNITED  
BROTHERHOOD OF CARPENTERS AND  
JOINERS OF AMERICA, AFL-CIO**

**OCTOBER 17, 2007 - OCTOBER 16, 2012**

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AGREEMENT made and entered into this 17<sup>TH</sup> day of October 2007  
and effective as of October 17, 2007, between:

THE TEST BORING ASSOCIATION  
ON BEHALF OF ITS MEMBERS' FIRMS  
HEREIN REFERRED TO AS  
(THE "TRADE ASSOCIATION" and/or THE "ASSOCIATION")

and the

DISTRICT COUNCIL OF NEW YORK CITY AND  
VICINITY OF THE UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMERICA  
HEREIN REFERRED TO AS  
(THE "UNION" and/or THE "DISTRICT COUNCIL")

#### ARTICLE I

##### Objects

###### (A) Purposes

To establish and maintain wages, hours and working conditions for the work covered by this Agreement in the territory to which it applies; to prevent strikes and lockouts; to insure the peaceable adjustment and settlement of any kind and all grievances, disputes or differences that may arise between the parties as such or between them as Employer and employee, and to provide for the adjustment of disputes between trades.

###### (B) Jurisdictional Disputes

In the event of a trade jurisdictional dispute, if the dispute cannot be informally resolved, the parties agree that such dispute will be submitted to the National Labor Relations Board.

(C) Maintaining Area Standards

The parties agree that their objective is to achieve a uniform basic system of wages and fringe benefits throughout the industry and, in an effort to achieve this mutual objective, the Union shall take all necessary steps to protect the Employers against other Employers, Union or Non-Union, with reference to the payment by such Employers to their employees of substandard wages, fringe benefits, and other working conditions.

**ARTICLE II**

Recognition and Union Security

(A) Recognition of Bargaining Agents

The Employer recognizes the Union as the exclusive bargaining agent for all covered employees referred to in this **Article II**.

The Trade Association will provide the Union with a list of its members who have designated the Association as its bargaining agent, and who have agreed to be bound by the terms and conditions of this Agreement. In addition, the Association will notify the Union of any changes in membership, either by the addition of new members or the dropping of members during the period of this Agreement. The Association shall furnish the Union with an Affidavit from each member it represents or may represent, authorizing it to represent a said member.

The Union recognizes the Association as the Collective Bargaining Agent on behalf of those Employers who have heretofore or who will hereafter authorize the Association to act on their behalf. It is agreed that for all purposes of this Agreement the Association and the Union are to be deemed to be the principal parties and the individual workers and Employers as the secondary parties.

In the event that any Member-Employer shall resign or be expelled from membership in the Trade Association, all obligations of the Trade Association with respect to such Member-Employer shall terminate and come to end simultaneously with the termination of the membership, but the Union shall have the option either to continue the binding force of the Agreement with respect to such Member-Employer (without the Trade Association) with the same force and effect as if this Agreement had been entered into between the Union and such Member-Employer directly, or to terminate this Agreement and bring it to an end insofar as it may affect such Member-Employer by giving the Member-Employer five (5) days' notice thereof; and, thereafter, bind such Member-Employer to a new Agreement.

(B) Covered Employees

The Employer recognizes the Union as the exclusive bargaining representative for all employees covered by this Agreement who are

engaged in Test Boring as determined by industry practice and provided in **Article IV** of this Agreement. All present employees covered by this agreement who are now members of the Union must remain members of the Union and shall maintain their membership in good standing as a condition of continued employment with the Employer.

(C) 45 Day Probation

If the employee is retained after forty five (45) days fringe benefits will be paid from day one of employment. If employee is not retained fringe benefits are not required to be paid. To be eligible the employer must fax to the Local Union on the first day of employment the name and location of the new employee.

(D) Union Security

The Employer shall be permitted to hire in the open market. All present employees who are not members of the Union and all new employees shall become members of the Union on the seventh (7) day following the beginning of their employment or the effective date of this Agreement, whichever is the later.

(E) Amendment of Law Regarding Union Security

It is agreed that if the law regarding Union security is amended to provide for a lesser qualification period, **Paragraph C** above will be automatically amended to conform to the amended law.

(F) Dues Check Off

The Employer shall deduct weekly from the wages of each member, regardless of where said member is working, an amount equal to said member's regular Union dues and assessments, when requested and authorized to do so in writing by said member. The amounts so withheld shall be remitted to the local Union, monthly. Whenever the Employer is in default in remitting said dues and assessments to the local Union and after reasonable notice of such default is given to the Employer, the Union may remove its members from the work of such Employer. If such men who are removed remain on the job site during regular work hours, they shall be paid for lost time not to exceed three (3) days' pay.

### **ARTICLE III**

#### **Arbitration**

(A) In the event of any dispute between the parties concerning the application or interpretation of the terms and provisions of this Agreement, the following procedures shall apply:

1) The dispute shall be submitted to a committee consisting of two (2) representatives designated by the Union and two (2) representatives designated by the Employer;

2) If a majority of a said committee agrees on a resolution of said dispute, then the parties involved shall be bound by such resolution without further appeal;

3) If a majority of a said committee cannot agree on a resolution of said dispute; then

4) Any dispute not resolved pursuant to the above shall be submitted to arbitration before a single arbitrator. The arbitrator shall serve, in order, from a panel of two, as follows:

(a) Roger Maher

(b) Robert Silagi

(c) Robert Herzog.

(B) If any arbitrator is not available to serve for any reason, the other one shall serve. Either party may challenge one arbitrator. The arbitrator shall conduct a hearing in such manner as he shall consider proper and shall serve as sole arbitrator of the dispute between the parties.

(C) The arbitrator shall have the right to conduct an ex parte hearing in the event of the failure of either party to be present at the time and place designated for the arbitration, and shall have the power to render a decision based on the testimony before him at such hearing. The decision of the arbitrator shall be final and binding upon both parties and may be entered as 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 arbitration, including the arbitrator's fee, shall be borne equally by the Employer and



the Union. It is the intent of the parties hereto that all disputes between them, both within and outside of the Agreement, shall be submitted to arbitration and that no defense to prevent the holding of the arbitration shall be permitted.

(D) Service of any document or notice referred to above, or service of any notice required by law in connection with the arbitration proceedings may be made by registered or certified mail.

(E) Until a decision shall have been rendered, neither party shall take any action of any character as to the grievance or issue in dispute. The arbitrator shall not have the authority to add, alter, vary or subtract any of the terms and provisions of this Agreement.

(F) 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 or any extension hereof or under the terms and conditions as set forth in **Article VIII** hereof.

#### **ARTICLE IV**

##### **Trade Jurisdiction**

The Driller shall be employed on all work known as core drilling, diamond drilling, mud drilling, pipe driving and setting, sounding, wash boring, pounding, probing, test boring, shot

drilling, hydraulic push method ie( geo-probe), geothermal drilling, auger drilling for sounding or test boring, monitoring wells and work relating to the installation of wells and any work performed on land or water used in connection with such activities, which are preliminary to the construction trades, including the moving, hauling, loading and unloading of such equipment by vehicles and the operation thereof.

The Helper will generally assist the Driller in the performance of his duties and any other work and jurisdiction now in the possession of the Helper employees covered by this Agreement.

No Employer shall work as a Driller or as a Helper.

Nothing contained in this Agreement shall be construed as intended to prohibit employees covered by this Agreement in the lawful exercise of their rights to refuse to work with employees who have not complied with the provisions of **Article II**, herein, or for Employers who violate the terms and conditions of this Agreement.

## **ARTICLE V**

### **Working Conditions**

(A) The amount or character of work demanded by the Employer or his representatives shall not be unreasonable nor shall it be

restricted by the Union, its representatives, officers or members

(B) That there shall be no restriction of the use of machinery, methods, tools or appliances.

(C) No person representing the Union, except its business representatives, shall have the right to interview the employees during business hours. The business representative shall comply with all general conditions of the job regarding passes, entrance to be used, etc.

(D) Employees covered by this Agreement shall have the privilege of working for whomsoever they see fit, according to the terms of this Agreement, and the Employer to be at liberty to employ or discharge whomever they see fit, subject to the terms of this Agreement.

(E) The Union or its representatives shall not order a strike or stoppage of work nor shall the employees strike against any Employer, or collectively leave the work of an Employer, nor shall any Employer lock out employees, except as provided herein.

(F) This Agreement shall apply within a radius of fifty (50) miles of the City Hall of the City of New York.

(G) There shall be a shop steward who will be appointed by the Union or its representatives during the life of a job contract, to attend to the interest of the Union and for the performance of such duty the Employer shall allow reasonable time.

(H) The parties agree that there shall be no discrimination in the employment, hiring or training of employees in the bargaining unit on the basis of race, creed, color, sex, national origin, age, disability, marital status, citizenship status, sexual orientation or affectional preference in all employment decisions, or Union activity as defined in applicable federal, state or local laws. For the purposes of this **Article**, "Citizenship status" means the citizenship of any person, or the immigration status of any person lawfully residing in the United States who is not a citizen or national of the United States.

(I) If competent Drillers and Helpers report on a job after having been requested to do so by the Employer, and they are not employed, unless prevented by weather conditions, they shall receive not less than four (4) hours' pay. If prevented by weather conditions, the employees so reporting shall receive two (2) hours' pay.

(J) When four (4) or more rigs are employed on one operation, a working foreman shall be employed on the operation.

(K) There shall be at least one (1) Helper employee with each Driller on land work.

(L) There shall be a second helper for inside work whenever portable hand carried equipment is involved for the first and last day of a job.

(M) There shall be at least two (2) Helpers to each Driller on water work.

(N) There shall be at least two (2) Helpers employed on four-inch pipe or over, unless four inch casing is needed or required to case off holes to a depth of twenty feet.

(O) A Driller shall not perform the work of a Helper, unless authorized by the Union.

(P) A Helper shall not perform the work of a Driller, unless authorized by the Union.

(Q) There shall be no work performed on Saturday, except in case of necessity. In the event of such necessity, the wages shall be paid at the rate of time and a half (1½) the regular rate of employee's pay.

(R) Any employee who is sent outside of the five (5) Boroughs of New York and within a fifty (50) mile radius of City Hall, New York, to work as a working foreman, Driller or Helper, shall be paid his or her traveling expenses and a eighty five (\$85.00) dollar, effective October 17, 2007, minimum per work day for board and lodging for all the time he or she remains on the operation. When an employee is laid off at the completion of the operation, he or she shall be paid traveling expenses and the above minimum per work day back to the source of hiring. This is to apply except when it becomes necessary for any man to travel daily to a point

outside the five (5) Boroughs of New York City.

(S) When any employee travels daily to a point outside of the five (5) boroughs of New York City, but within the fifty (50) mile limit, whether or not transportation is provided by contractor's equipment, automobile or public carrier, all traveling time in excess of one hour each way to the job site from the five (5) Boroughs or the contractor's base of operations established by the contractor as either its office or storeyard, whichever is nearer to the job, is to be paid for at the straight time hourly rate. The base of operations once established by the Employer shall not be changed, except by mutual consent.

(T) Except as provided for in this Agreement, employees shall be required to report to a job site at his or her own expense. If however, the employee is required to transport personnel or material, exclusive of fuel, hand tools and other small incidentals at the request of the Employer, the employee shall be reimbursed reasonable expenses for same.

(U) Each employee shall give notice to the Union regarding the location of each job before commencing work unless unable to do so due to unusual or extraordinary circumstances.

(V) The Employer will allow drillers to call the local union business representatives with there job locations or provide business agents with drillers cell phone numbers.

(W) If an employee is required to report to the base of operations he shall be paid from the time he departs the base.

## ARTICLE VI

### Wages

#### (A) Wage Rates

The Union shall have the sole discretion to reallocate wage rates and fringe benefit contributions within the bargaining unit.

(B) All wage & fringe benefit rates are per hour:

<u>EFFECTIVE DATE</u>	<u>TOTAL WAGE AND FRINGE BENEFIT INCREASES</u>		
	<u>DRILLER</u>	<u>FOREMEN</u>	<u>HELPER</u>
OCTOBER 17, 2007	\$2.21	\$3.21	\$1.94
OCTOBER 17, 2008	\$2.21	\$3.21	\$1.94
OCTOBER 17, 2009	\$2.21	\$3.21	\$1.94
OCTOBER 17, 2010	\$2.21	\$3.21	\$1.94
OCTOBER 17, 2011	\$2.21	\$3.21	\$1.94

#### DRILLER

<u>Eff Date:</u>	<u>10/17/07</u>	<u>10/17/08</u>	<u>10/17/09</u>	<u>10/17/10</u>	<u>10/17/11</u>
Wage	\$ 31.04	-----	-----	-----	-----
Fringe	\$ 15.31	-----	-----	-----	-----
Organizing	\$ .10				
<b>Total Wage and Fringe</b>	<b>\$ 46.45</b>	<b>\$ 48.66</b>	<b>\$ 50.87</b>	<b>\$ 53.08</b>	<b>\$ 55.29</b>

#### FOREMAN

<u>Eff Date:</u>	<u>10/17/07</u>	<u>10/17/08</u>	<u>10/17/09</u>	<u>10/17/10</u>	<u>10/17/11</u>
Wage	\$ 32.04	-----	-----	-----	-----
Fringe	\$ 15.31	-----	-----	-----	-----
Organizing	\$ .10				
<b>Total Wage and Fringe</b>	<b>\$ 47.45</b>	<b>\$ 49.66</b>	<b>\$ 51.87</b>	<b>\$ 54.08</b>	<b>\$ 56.29</b>

**HELPER**

<u>Eff Date:</u>	<u>10/17/07</u>	<u>10/17/08</u>	<u>10/17/09</u>	<u>10/17/10</u>	<u>10/17/11</u>
Wage	\$ 25.28	-----	-----	-----	-----
Fringe	\$ 15.31	-----	-----	-----	-----
Organizing	\$ .10				
<b>Total Wage and Fringe</b>	<b>\$ 40.69</b>	<b>\$ 42.69</b>	<b>\$ 44.57</b>	<b>\$ 46.51</b>	<b>\$ 48.45</b>

A newly hired Helper with no experience in the Industry shall  
be paid as follows:

**HELPER - 1<sup>st</sup> YEAR ON THE JOB (70%)**

<u>Eff Date:</u>	<u>10/17/07</u>	<u>10/17/08</u>	<u>10/17/09</u>	<u>10/17/10</u>	<u>10/17/11</u>
Wage	\$ 17.70	-----	-----	-----	-----
Fringe	\$ 15.31	-----	-----	-----	-----
Organizing	\$ .10				
<b>Total Wage and Fringe</b>	<b>\$ 33.11</b>	-----	-----	-----	-----

**HELPER - 2<sup>ND</sup> YEAR ON THE JOB (80%)**

<u>Eff Date:</u>	<u>10/17/07</u>	<u>10/17/08</u>	<u>10/17/09</u>	<u>10/17/10</u>	<u>10/17/11</u>
Wage	\$ 20.22	-----	-----	-----	-----
Fringe	\$ 15.31	-----	-----	-----	-----
Organizing	\$ .10				
<b>Total Wage and Fringe</b>	<b>\$ 35.63</b>	-----	-----	-----	-----

**HELPER - 3<sup>RD</sup> YEAR ON THE JOB (90%)**

<u>Eff Date:</u>	<u>10/17/07</u>	<u>10/17/08</u>	<u>10/17/09</u>	<u>10/17/10</u>	<u>10/17/11</u>
Wage	\$ 22.75	-----	-----	-----	-----
Fringe	\$ 15.31	-----	-----	-----	-----
Organizing	\$ .10				
<b>Total Wage and Fringe</b>	<b>\$ 38.16</b>	-----	-----	-----	-----

**HELPER - 4<sup>TH</sup> YEAR ON THE JOB (100%)**



Eff Date:	<u>10/17/07</u>	<u>10/17/08</u>	<u>10/17/09</u>	<u>10/17/10</u>	<u>10/17/11</u>
Wage	\$ 25.28	-----	-----	-----	-----
Fringe	\$ 15.31	-----	-----	-----	-----
Organizing	\$ .10				
<b>Total Wage and Fringe</b>	<b>\$ 40.69</b>	-----	-----	-----	-----

**Wage rates and fringe benefit contributions within the bargaining unit shall be determined and/or reallocated by the Union at its sole discretion.**

Any first, second or third year Helper who obtains or has a CDL and Hazmat training shall be upgraded to the next level of wages. Effective April 17, 2008 the employer will provide training and pay for the permit fee and license fee for CDL Class B. The employer will provide a truck and a driver for the test. The employer will compensate the employee for taking the CDL-Class B test provided employee passes the test. Any Eligible helper who has not obtained a CDL-Class B license can not advance to the next level until they obtain the Class B license. All contract increases as provided herein shall be applied on a pro rata share. All other Helpers, who are currently employed at the effective date of this Agreement shall receive the full Helper wage rate as provided in this **Article VI, Paragraph (B)**. This job classification shall be considered a pre-apprentice position and shall be apprenticed at the discretion of the joint apprenticeship committee.

Wages shall be paid weekly on the job before 4:00 p.m. Friday, said wages to be paid at the Employer's option, either in cash, in

envelopes, upon the outside of which shall be plainly marked the Employer's name, the employee's name and number, social security number, the hours worked, and the amount of money enclosed, or by check provided:

(a) The check is a Todd Insured, A.B.C. System Payroll Check, or similar type of check, containing the above information as on pay envelope, and that delivery of the checks to the employees shall be made at least on the day preceding a banking day.

(b) Any deductions from wages now or hereafter required by law shall also be marked on the face of pay envelopes. If employees are not paid as specified above, double time shall be paid on Friday, between the hours of 4:30 p.m. and 6:00 p.m. and single time for working time thereafter, until paid, not exceeding fourteen (14) hours.

(C) Time and one-half (1½) shall be paid for all work in excess of eight (8) hours per day and for all work performed on Saturdays.

(D) Holidays - The following paid holidays referred to herein are:

New Years Day	Fourth of July
Labor Day	Thanksgiving Day
Memorial Day	Christmas Day

(E) Employees employed at any time within the payroll week

shall be paid eight (8) hours' pay at the single time basic rate for each of the above paid six (6) holidays. It is agreed that any paid holiday falling on Saturday is within the payroll week and shall be paid for by members employing Core Drillers, Core Driller Helpers or Core Driller foremen. No work shall be performed on any of the above holidays. If a paid holiday falls on a Sunday, it shall be celebrated on the following Monday. If any employee performs work on any of the above paid holidays, he or she shall receive time and one-half (1½) for all hours worked plus the holiday pay provided here-in-above.

Under no circumstances shall an employee receive payment from more than one Employer for the same holiday.

All work performed on Sunday shall be paid at the rate of double time.

(F) Hazardous Waste pay differential shall be paid the employees engaged in same for the period worked as follows:

Level C - additional ten (10%) percent above the wage rate per hour  
Level B - additional ten (10%) percent above the wage rate per hour  
Level A - additional ten (10%) percent above the wage rate per hour

## **ARTICLE VII**

### **Work Hours**

(A) Eight (8) hours shall constitute a day's work. A regular eight (8) hour day shall be continuous nine (9) hours, including

one (1) hour for lunch, beginning at 8:00 a.m. and ending at 5:00 p.m. on all regular working days. The lunch hour may be curtailed by mutual consent to one-half ( $\frac{1}{2}$ ) hour.

(B) The shift day shall be the continuous eight and one-half ( $8\frac{1}{2}$ ) hours from 6:00 a.m. to 2:30 p.m. and from 2:30 p.m. to 11:00 p.m., including one-half ( $\frac{1}{2}$ ) hour of employees regular rate of pay for lunch.

(C) When two (2) or more shifts are employed, single time shall be paid for each shift, but those employees employed on a shift other than from 8:00 a.m. to 5:00 p.m. shall, in addition, receive one dollar(\$1.00) per hour differential for each hour worked.

(D) When three (3) shifts are needed, each shift shall work seven and one-half ( $7\frac{1}{2}$ ) hours, but to be paid for eight (8) hours of labor and to be permitted one-half ( $\frac{1}{2}$ ) hour for mealtime.

(E) Where tidal conditions prevail, eight (8) consecutive hours between 6:00 a.m. and 6:00 p.m. shall constitute a day's work.

(F) Where public authorities prohibit operation of work covered by this Agreement during prescribed hours heretofore agreed upon, then in that event, any consecutive eight (8) hours shall constitute a day's work within the time limits prescribed by the public authorities.

(G) If a Driller or Helper works any part of an hour, he or she shall be paid for the full hour. If a Driller or Helper is ordered to stand by, by the Employer's representative after a work stoppage, he or she shall be paid at the hourly rate of wages.

(H) When an employee is required to work on water, he or she shall receive in addition to the regular pay, a differential of one dollar (\$1.00) per hour.

### ARTICLE VIII

#### Fringe Benefit Funds

##### (A) Payment of Contributions

Each Employer shall make contributions on behalf of all employees covered by this Agreement and employed by said Employer within the scope of this Agreement, from the first day of employment to the New York City District Council of Carpenters Welfare Fund, Pension Fund, and Annuity Fund in an amount called for in this Agreement.

##### (B) Welfare and Pension Funds

The Employer shall contribute to the New York City District Council of Carpenters Welfare and Pension Funds on behalf of all covered employees under this Agreement for each hour worked including paid holidays and vacation.

##### Annuity Fund

The Employer shall contribute to the New York City District Council of Carpenters Annuity Fund on behalf of all covered employees under this Agreement for each hour worked including paid holidays and vacation.

**FRINGE BENEFIT RATE PER HOUR FOR ALL CATEGORIES OF WORKERS**

<b><u>Eff Date:</u></b>	<b><u>10/17/07</u></b>	<b><u>10/17/08</u></b>	<b><u>10/17/09</u></b>	<b><u>10/17/10</u></b>	<b><u>10/17/11</u></b>
<b>WELFARE</b>	<b>\$6.64</b>	-----	-----	-----	-----
<b>PENSION</b>	<b>\$5.50</b>	-----	-----	-----	-----
<b>ANNUITY</b>	<b>\$3.17</b>	-----	-----	-----	-----
<b>TOTAL</b>	<b>\$15.31</b>	-----	-----	-----	-----

(C) Audits

All Employer's books and payroll records shall be made available at all times upon the demand of the Trustees of the said Funds for audit and inspection by a representative of the said Trustees during all reasonable business hours.

(D) Declarations of Trusts

The Employer shall be bound by all the terms and conditions of all the Agreements and Declarations of Trust establishing the Fringe Benefit Funds, and by all bylaws regulating each of the said Funds provided same are not inconsistent with any of the terms and conditions of this Agreement. The Employer acknowledges that he has received copies of the various and respective Agreements and Declarations of Trust and any Plans thereunder pertaining to the aforementioned Funds, and is fully familiar with the terms and conditions of all the said documents, and agrees to be fully bound

thereby as though the said Agreements and Declarations of Trust and Plans thereunder were fully set forth herein, and are all deemed to be incorporated within the framework of this Agreement.

(E) Default

The breach of or default in any of the terms and conditions of the aforementioned Agreements and Declarations of Trust and Plans thereunder shall be considered to be, at the election of the Union, a breach of this Agreement.

(F) Work Stoppage for Default

Whenever the Employer is declared to be in default on the payments to the aforementioned Funds or in failing to report to the various Funds as aforementioned, the Union may remove its members without notice from their work with the Employer. If such men who are removed remain at the jobsite of plant or other Employer's premises during regular working hours, they shall be paid for lost time, not to exceed three (3) days' pay.

(G) Formal Legal Proceedings

In the event that formal proceedings are instituted before a court of competent jurisdiction by the trustees of a Benefit Fund or Funds to collect delinquent contributions to such Fund(s) the Employer shall pay to such Fund(s), in accordance with the judgment of the court, and in lieu of any other liquidated damages, costs, attorney's fees and/or interest, the following:

- (1) the unpaid contributions; plus
- (2) interest on the unpaid contributions determined at the prime rate of Citibank plus two (2%) percent; plus
- (3) an amount equal to the greater of -
  - (a) the amount of the interest charges on the unpaid contributions as determined in (2) above, or
  - (b) liquidated damages of twenty (20%) percent of the amount of the unpaid contributions; plus
- (4) reasonable attorney's fees and costs of the action; and
- (5) such other legal or equitable relief as the court deems appropriate.

(H) The Arbitrator's Powers

In the event proceedings are to be instituted before an arbitrator to collect delinquent contributions to a Benefit Fund or Funds, and if such arbitrator renders an award in favor of such Fund(s), the arbitrator shall be empowered to award such interest, liquidated damages, and/or costs as may applicable under the Agreement and Declaration of Trust establishing Fund(s).

(I) Arbitration

Should any dispute or disagreement arise between the parties, hereto, or between the Union and any Employer-member signatory hereto, concerning any claim arising from payments to the Funds of principal and/or interest which is allegedly due, either party may seek arbitration of the dispute before the impartial arbitrator designated hereunder by filing a notice of intent to arbitrate in writing with said impartial arbitrator and serving a copy of said notice on the Trade Association, or the Union, as the case may be.



Unless a waiver is mutually agreed to in writing by the parties hereto, a hearing shall be convened as soon as practicable, and the arbitrator shall submit his award within twenty (20) days of the close of the hearing. The arbitrator shall have full and complete authority to decide any and all issues raised by the submission and to fashion an appropriate remedy including, but not limited to, monetary damages. The arbitrator's award in this regard shall be final and binding upon the parties hereto and the individual Employer, if any, and shall be wholly enforceable in any court of competent jurisdiction. The cost of the arbitration, including the fees to be paid to the arbitrator shall be included in the award and shall be borne by the losing party.

Roger Maher, Robert Silagi and Robert Herzog are hereby designated as impartial arbitrator(s) hereunder. In the event all of the arbitrators are unwilling or unable to serve as impartial arbitrator, the New York State Employment Relations Board shall designate an impartial arbitrator to serve in his place and stead.

The agreement of the parties to submit said matters regarding the payment of contributions to an arbitrator does not excuse the Employer from any statutory, civil or criminal liability which may attach to his actions under Municipal, State or Federal law. The submission of a matter to arbitration is in no way meant to affect the right of the Union to remove its members from an Employer's

premises, as provided for in this Agreement.

(J) The Employer and Union agree to meet on establishment of a stamp plan if requested by the Board of Trustees of Benefit Funds.

## **ARTICLE IX**

### **Bonding**

Paragraph 1. An Employer is required to post a bond as set forth in **Article IX, Paragraph 5** of this Agreement to guarantee payment of contributions to the Funds as provided for in **Article VIII.**

Paragraph 2. Employer's Acknowledgment of Prompt Payments to the Funds

The Employer further acknowledges and the parties agree that prompt payment of fringe benefit contributions is essential to the proper administration of the Agreement, the appropriate funding and actuarial soundness of the Funds, and the timely payment of benefits to participating employees. The Employer agrees to comply with the Funds' Collection Procedures, as may be adopted by the Board of Trustees, including responding to information and other requests on a timely basis, promptly, including but not limited to permitting and cooperating with an audit. When a signatory Employer owes to the Benefit Funds an amount greater than the face

amount of its surety bond, the surety bond must be increased to cover such indebtedness. An Employer determined to be delinquent shall be required to make weekly cash payments to the Funds by certified check to cover ongoing contribution obligations. If this is not done, the Union at its discretion may remove all members of the bargaining unit from the employ of that Employer.

Paragraph 3. Job Action for Non-Complying Employer

The Employer agrees to provide a bond in such amounts as provided for here in **Article IX** relating to bonding before commencing any work. In the event that the Employer fails to provide such bond within seven (7) days of commencing work, the District Council may consider the Employer in default and remove its members, upon reasonable notice, from each of the Employer's job sites. If the members remain on the site, they shall each receive no more than three (3) days of wages and fringe benefit contributions during such job action.

Paragraph 4. (a) No Limitations

This **Paragraph** shall in no way relieve or excuse the Employer of its contractual obligation to post a bond or such other form of surety as required by the Benefit Fund Trustees, regardless of the business form under which the Employer performs the work covered under this Agreement. The Employer also agrees that this provision shall not excuse the Employer's affiliate from posting said bond or

other form of surety, provided the Employer controls the labor relations of a said affiliate

(b) Application to Non-Complying Employer

Any Employer commencing work in violation of this **Paragraph** shall be in violation of **Article VIII** relating to the Funds.

Paragraph 5. Bond Amount

The Funds' Trustees shall determine the amount of bond the Employer is required to provide, but such amount shall be no less than an amount equal to sixty (60) days of estimated contributions. The Employer shall provide a bond in the minimum amounts as follows:

<u>Number of Employees</u>	<u>Bond Amount</u>
1-3	\$ 5,000.00
4-7	\$ 10,000.00
8-10	\$ 15,000.00
11-15	\$ 25,000.00
16-20	\$ 50,000.00
21 or more	\$ 100,000.00

The Funds may seize the bond if the Funds determine that the Employer has failed to make required contributions to the Funds or if the Employer has violated the Funds' Collection Procedures. The amount of the bond shall be subject to increase or decrease, in the discretion of the Trustees, depending on the number of employees employed on a particular job site or period.

**ARTICLE X**

### Other Operations

(A) In order to protect and preserve, for the employees covered by this Agreement, all work heretofore performed by them, and in order to prevent any device or subterfuge to avoid the protection and preservation of such work, it is hereby agreed as follows: If and when the Employer shall perform any work of the type covered by this Agreement, under its own name or under the name of another, as a corporation, company, partnership, or any other business entity, including a joint venture, wherein the Employer exercises either directly or indirectly any significant degree of ownership management or control, the terms and conditions of this Agreement including Fringe Benefits shall be applicable to all such work.

(B) All charges of violations of **Paragraph (A)** of this **Article** shall be considered a dispute under this Agreement and shall be processed in accordance with the procedures for the handling of grievances and the final binding resolution of disputes, as provided in **Article III** of this Agreement. As a remedy for violations of this **Section**, the arbitrator is empowered, at the request of the Union, to require an Employer to pay to affected employees covered by this Agreement, including registered applicants for employment, the equivalent of wages lost by such employees as a result of the violations and to pay into the

affected joint trust funds established under this Agreement any delinquent contributions together with interest, penalty and liquidated damages to such funds which have resulted from the violations. Provisions for this remedy herein does not make such remedy the exclusive remedy available to the Union or the Trust Fund for violation of this **Section**; nor does it make the same, or other remedies unavailable to the Union or the Trust Fund for violations of other **Sections** or **Articles** of this Agreement.

(C) If, as a result of violations of this **Article** the Union and/or the Trustees of the joint trust funds is required to institute court action to enforce an award rendered in accordance with **Paragraph (B)** above, or to defend an action which seeks to vacate such award, the Employer shall pay any accountants' and attorneys' fees incurred by the Union and/or fund trustees, plus costs of litigation, which have resulted from the bringing of such court action.

## **ARTICLE XI**

### **Legality**

Any provisions of this Agreement which provides for written security or employment in a manner and to an extent prohibited by any law or the determination of any governmental board or agency shall be and hereby is of no force or effect during the term of any

such prohibition. It is understood and agreed, however, that if any of the provisions which are hereby declared to be of no force or effect because of restrictions imposed by law is or are determined either by Act of Congress or other legislative enactment or by a decision of the court of highest recourse to be legal or permissible, then any such provisions shall immediately become and remain effective during the remainder of the term of this Agreement. In the event that there shall be changes in applicable laws as to Union security, the parties shall renegotiate any provisions concerning Union security.

In the event that any provision of this Agreement shall be declared to be in violation of law, the remaining provisions of this Agreement shall continue in full force and effect.

## **ARTICLE XII**

### **Expiration, Automatic Renewal and Retroactivity**

Paragraph 1. This Agreement shall be binding on the Trade Association, Employers who have designated the Trade Association as its bargaining agent, the Union, their successors and assigns. The duration of this Agreement shall continue until **October 16, 2012** shall be renewed automatically for one year intervals thereafter unless notice to the other at their last known address has been provided by either party by certified and regular mail no more than

ninety (90) days or no less than sixty (60) days before the contract expiration that such party seeks to negotiate a new contract or modify or amend this Agreement through negotiations. Once negotiations have commenced, neither party will seek to alter unilaterally the terms or conditions of employment of employees covered by this Agreement until such terms have been changed by execution of a newly negotiated Agreement.

Paragraph 2. It is mutually agreed that all wages, fringe benefits and conditions provided for in this Agreement shall be retroactive to **October 17, 2007**



**ARTICLE XIII**

**Effectuating Claus and Signatories**

**IN WITNESS WHEREOF**, The parties hereto make and enter into this Agreement, and we, their duly authorized and empowered representatives, have hereunto set our hands and seal this **17th day of October 2007**

**For the TEST BORING ASSOCIATION**

**By:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**For the UNION  
DISTRICT COUNCIL OF NEW YORK CITY  
AND VICINITY OF THE UNITED BROTHERHOOD  
OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO**

**By:** \_\_\_\_\_  
**AUTHORIZED SIGNATURE  
OF THE DISTRICT COUNCIL**

The party of the First Part, herein referred to as the Employer, signatory to this Agreement, hereby acknowledges receipt of copies of the Agreement and Declaration of Trust of the New York City District Council of Carpenters Welfare Fund; Pension Fund; and Annuity Fund.

**For the TEST BORING ASSOCIATION**

**By:** \_\_\_\_\_ **DATE:** \_\_\_\_\_