PROJECT LABOR AGREEMENT

for the

CONTRA COSTA WATER DISTRICT
ALTERNATIVE INTAKE PROJECT

Between

SWINERTON, INC.

And

CONTRA COSTA BUILDING &
CONSTRUCTION TRADES COUNCIL
AND ITS AFFILIATED LOCAL UNIONS
And the
SAN JOAQUIN BUILDING &
CONSTRUCTION TRADES COUNCIL
AND ITS AFFILIATED LOCAL UNIONS

PREAMBLE

This Agreement is made and entered into the 16th day of November, 2007, by and between Swinerton Inc., ("Coordinator"), together with other contractors and/or subcontractors who shall become signatory to this Agreement by signing the "Agreement To Be Bound" (Attachment A), ("Contractor(s)"), and the Local Unions signatory hereto and the Contra Costa County Building & Construction Trades Council ("Council") and its affiliated local unions who have executed this Agreement (referred to individually as "Union" and collectively as "Unions"). The parties further agree that the provisions of this Agreement shall apply to the CCWD Alternative Intake Project ("Project").

Recitals

WHEREAS, the Contractors will be engaged in construction of the Project; and

WHEREAS, a skilled labor pool represented by Building Trades Unions will be required to complete the work involved; and
WHEREAS, the Building Trades Unions agree to cooperate in every way possible with employees of the Contractors; and

WHEREAS, the parties to this Agreement mutually agree that safety, quality, productivity and labor harmony are primary goals; and

WHEREAS, the Project will provide water supply and system reliability critical to the customers of the Contra Costa Water District; and

WHEREAS, the parties recognize the need for safe, efficient and speedy construction in order to reduce unnecessary delays and to shorten construction schedules, thereby further reducing costs, resulting in timely completion of the Project; and

WHEREAS, the parties recognize the need to at all times maintain continuous plant operations and uninterrupted water deliveries throughout the construction of the Project; and

WHEREAS, the parties desire to mutually establish and stabilize wages, hours and working conditions for the employees employed on the Project by the Contractors, and further to encourage close cooperation to achieve a satisfactory, continuous and harmonious relationship between the parties to this Agreement;

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

ARTICLE 1

PURPOSE

1.1 The purposes of this Agreement are to promote efficient construction operations on the Project, to insure an adequate supply of skilled craftspeople and to provide for peaceful, efficient and binding procedure for settling labor disputes. In so doing, the parties to this Agreement establish the foundation to promote the public interest, to provide a safe work place, to assure high quality construction, to ensure an uninterrupted water deliveries and plant operations, and to secure optimum productivity, on-schedule performance and Contra Costa Water District (Owner) satisfaction.

1.2 The parties agree that one of the primary purposes of this Agreement is to avoid the tensions that might arise on the project if union and non-union workers of different employers were to work side-by-side on the Project thereby leading to labor disputes that could delay completion of the Project.
1.3 It is the intent of the parties to set out uniform and fair working conditions for the efficient completion of the Project, maintain harmonious labor/management relations and eliminate strikes, lockouts and other delays.

1.4 It is in the interest of the parties to this Agreement to utilize resources available in the local area, including those provided by minority and women-owned enterprises.

ARTICLE 2

SCOPE OF AGREEMENT

2.1 This Agreement shall apply only to that new construction work awarded by the Owner and performed by the signatory Contractors during the term of this Agreement. The Scope of the Agreement includes all new construction on the Contra Costa Water District Alternative Intake Project awarded by the Owner and/or Construction Manager under Project Number 105400, and any related change order(s).

2.2 This Agreement shall apply only to construction/craft employees working on this Project represented by the Unions signatory hereto, and shall not apply to Contractors' supervisors, technical or non-manual employees including, but not limited to, executives, engineers, office and clerical employees, drafters, supervisors, timekeepers, messengers, guards, or any other employees above the classification of general foreman or inspectors, material testers, and/or x-ray technicians, except to the extent that such inspectors, material testers, and/or x-ray technicians are customarily covered by the Local Collective Bargaining Agreement and as to which classification a prevailing wage determination has been published.

2.3 There shall be no limitation or restriction upon the choice of materials or upon the full use and installation of equipment, machinery, package units, factory pre-cast, prefabricated or preassembled materials, tools or other labor-saving devices. Fabrication provisions of the appropriate national or local agreements shall be applicable.

2.4 After installation by the Contractor(s) and upon mechanical completion, it is understood the Owner reserves the right to perform start-up, operation, repair, maintenance or revision of equipment or systems with persons of the Owner's choice. If required, the service representative may make a final check to protect the terms of a manufacturer's guarantee or warranty prior to start-up of a piece of equipment.
2.5 It is recognized by the parties to this Agreement that the signatory Coordinator and Contractor(s) are acting only on behalf of said Coordinator and Contractor(s), and said Coordinator and Contractor(s) have no authority, either expressed, implied, actual, apparent or ostensible, to speak for or bind the Owner.

2.6 It is expressly agreed and understood by the parties hereto that the Owner shall retain the right at all times to perform and/or subcontract all portions of the construction and related work on the Project site not contracted to the signatory Contractor(s).

2.7 The working conditions and hours of employment herein provided have been negotiated by the Unions exclusively with the representatives of the Contractor(s).

2.8 It is expressly agreed and understood by the parties hereto that the Owner shall have the right to purchase material and equipment from any source and the craftspersons will handle and install such material and equipment.

2.9 This Agreement shall not apply to any work performed on or near, or leading to or into the Project site by federal, state, county, city or other governmental bodies, or their contractor(s); or by utilities or their contractor(s); and/or by the Owner, its employees, or its contractor(s) for work which is not part of the Project including, but not limited to, maintenance and operations.

ARTICLE 3

SUBCONTRACTS

3.1 Each Contractor(s) agrees that neither it nor any of its subcontractors will subcontract any work to be done on the Project except to a person, firm, or corporation who is or becomes party to this Agreement. Any Contractor(s) or subcontractor working on the Project shall, as a condition to working on the Project, become signatory to and perform all work under the terms of this Agreement. The furnishing of materials, supplies or equipment and the delivery thereof shall in no case be considered subcontracting.

3.2 A subcontractor is defined as any person, firm or corporation who agrees under contract with the Contractor(s), or a subcontractor of the Contractor, to perform on the Project, any part or portion of the construction work covered by the prime contract, including the operating of construction equipment, performance of labor and/or installation of materials.
3.3 The Contractor(s) has the primary obligation for performance of all conditions of this Agreement. This obligation cannot be relieved, evaded or diminished by subcontracting. Should the Contractor(s) elect to subcontract, the Contractor(s) shall continue to have such primary obligation.

3.4 A Contractor(s) who provides in the subcontract that the subcontractor will pay the wages and benefits and will observe the hours and all other terms and conditions of this Agreement, shall not be liable for any delinquency by such subcontractor in the payment of any wages or fringe benefits provided herein, including payments to Health & Welfare, Pension, Vacation/Holiday Dues Supplement and Training & Retraining Funds, except as provided in the Labor Code.

3.4.1 The contractor(s) will give written notice to the Union(s) of any subcontract involving the performance of work covered by this Agreement within either five (5) days of entering such subcontract or before the subcontractor commences work on the Project, whichever occurs first, and shall specify the name and address of the subcontractor. Written notice at a Pre-Job Conference shall be deemed written notice under this provision for those subcontractors listed at the Pre-Job only.

3.4.2 Thereafter, if such subcontractor should become delinquent in the payment of any wages or benefits as above specified, the Trust Fund shall immediately give written notice thereof to the Contractor(s) and to the subcontractor specifying the nature and amount of such delinquency.

3.4.3 In the event the Contractor(s) fails to give written notice of a subcontract as required herein, such Contractor(s) shall be liable for all delinquencies of the subcontractor on this Project only without limitation.

3.4.4 The provisions of this Section 3.4 shall be applied only to the extent permitted by law and, notwithstanding any other provision of this Agreement, no aspect of the subcontractors’ clause, including its enforcement, may be enforced by or subject to strike action.

3.4.5 Nothing in this Agreement is meant to interfere with the normal enforcement or collection rights of the fringe benefit Trust Funds.

3.5 Application to Signatory Contractors. (A) With regard to any Contractor that is independently signed to any Schedule A Master Labor Agreement ("MLA"), this Agreement shall in no way supersede or prevent the enforcement of any subcontracting clause contained in such MLA, except as specifically set forth in paragraph (B) of this sub-section. Any such subcontracting clause in a MLA shall remain and be fully enforceable between such craft union and such signatory Contractor and no provision of this Agreement shall be interpreted and/or applied in
any manner that would give this Agreement precedence of the subcontracting obligations and restrictions that exist between each craft union and their respective signatory Contractors under the MLA, except as specifically set forth in paragraph (B) of this sub-section.

(B) If a craft union (hereafter "aggrieved union") believes that an assignment of work on this Project has been made improperly by a Contractor or subcontractor, even if such assignment of work was made as a result of another craft union's successful enforcement of the subcontracting clause in its MLA, as permitted by subsection (A) of this section, the aggrieved union may submit a claim under the jurisdictional dispute resolution procedure of this Agreement and the decision rendered as part of that process shall be enforceable to require the Contractor or subcontractor that made the work assignment to assign that work prospectively to the aggrieved union. An award made to a craft union under the subcontracting clause of its MLA, as permitted pursuant to subsection (A) of this section, shall be valid and fully enforceable by that craft union unless it conflicts with a jurisdictional award made pursuant to this Agreement. If the award made under this Agreement conflicts with the jurisdictional award, the former shall be null and void ab initio.

ARTICLE 4

RELATIONSHIP BETWEEN PARTIES

4.1 This Agreement shall only be binding on the signatory parties hereto, and shall not apply to parents, affiliates, subsidiaries, or other divisions of the Coordinator and signatory Contractor(s) unless signed by such parent, affiliate, subsidiary, or other division of such company.

4.2 Each Contractor(s) shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement. Any alleged breach of this Agreement by a Contractor(s) or any dispute between the signatory Union(s) and the Contractor(s) respecting compliance with the terms of this Agreement, shall not affect the rights, liabilities, obligations and duties between the signatory Union(s) and each other Contractor(s) party to this Agreement.

4.3 It is mutually agreed by the parties that any liability by a signatory Union(s) to this Agreement shall be several and not joint. Any alleged breach of this Agreement by a signatory Union(s) shall not affect the rights, liabilities, obligations and duties between the signatory Contractors and the other Unions party to this Agreement.
ARTICLE 5

NO STRIKES - NO LOCKOUTS

5.1 During the life of this Agreement, the Union(s) and its members, agents, representatives and employees shall not incite, encourage, condone or participate in any strike, walkout, slowdown, sit-down, stay-in, boycott, sympathy strike, picketing or other work stoppage or hand-billing of any nature whatsoever, for any cause whatsoever, or any other type of interference of any kind, coercive or otherwise, and it is expressly agreed that any such action is a violation of this Agreement.

5.1.1 Withholding employees for failure of a Contractor(s) to tender trust fund contributions as required in accordance with Article 16 or for failure to meet its weekly payroll is not a violation of this Article 5; however, the Union shall give the affected Contractor and the Coordinator written notice seventy-two (72) hours prior to the withholding of employees.

5.2 Upon written facsimile or telegraphic notice of a violation to the Local and International Union(s) offices, the Union(s) and its officers shall take immediate action and will use its (their) best efforts to prevent, end or avert any such aforementioned activity or the threat thereof by any of its officers, members, representatives or employees, either individually or collectively, including but not limited to, publicly disavowing any such action and ordering all such officers, representatives, employees or members who participate in such unauthorized activity to cease and desist from same immediately and to return to work and comply with its orders. The Contractor(s) shall have the right, in the event of a work stoppage by the Union(s) to replace the employees represented by the Union(s) in violation of this Agreement in any way the Contractor(s) chooses, until the Union(s) effects the return to work of such employees. Nothing in this Agreement shall be construed to limit or restrict the right of any of the parties to this Agreement to pursue fully any and all remedies available under law in the event of a violation of this Article 5.

5.3 In consideration of the foregoing, the Contractor(s) shall not incite, encourage or participate in any lockout or cause to be locked out any employee covered under the provisions of this Agreement. The term “lockout” does not refer to the discharge, termination or layoff of employees by the Contractor(s) for any reasons in the exercise of its rights as set forth in any provision of this Agreement, nor does “lockout” include the Owner’s or Contractors’ decision to terminate or suspend work on the site or any portion thereof for any reason.

5.4 Any employee or employees inciting, encouraging or participating in any strike, slowdown, picketing, sympathy strike or other activity in violation of this Agreement is subject to immediate discharge and the procedure of Article 11, if invoked.
5.5 Any party to this Agreement may institute the following binding arbitration procedure when such a breach is alleged. In the event a party institutes this procedure, arbitration shall be mandatory.

5.5.1 The party invoking this procedure shall immediately notify Gerald McKay, who the parties agree shall be the permanent Arbitrator under this procedure. In the event that the permanent Arbitrator is unavailable at any time, the Arbitrator shall appoint an alternate. Notice to the Arbitrator shall be by the most expeditious means available, with notice by facsimile, telegraph or similar means to the party alleged to be in violation and the involved Union General President.

5.5.2 Upon receipt of said notice the Arbitrator named above or the alternate shall designate a place for, schedule and hold a hearing within twenty-four (24) hours.

5.5.3 The Arbitrator shall notify the parties by facsimile, telegram or similar means of the place and time chosen for the session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an award by the Arbitrator.

5.5.4 The sole issue at the hearing shall be whether or not a violation of this Article has in fact occurred, and the Arbitrator shall have no authority to consider any matter in justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court or other arbitration proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the award. The Arbitrator shall order cessation of the violation of this Article and other appropriate relief, and such award shall be served on all parties by hand or registered mail upon issuance.

5.5.5 The award shall be final, binding and non-reviewable as to the merits. A judgment of any court of competent jurisdiction shall be entered upon the award, which may be enforced by any such court, upon the filing of this Agreement and all other relevant documents referred to hereinabove in the following manner. Facsimile, telegraphic or similar notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the Arbitrator’s award as issued under Section 5.5.4 of the Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party’s right to participate in a hearing for a final order of enforcement. The Court’s order or orders enforcing the Arbitrator’s award shall be served on all parties by hand or by delivery to their last known address or by registered mail.
5.5.6 Any rights created by statute or law governing arbitration or injunction proceedings inconsistent with the above procedure, or which interfere with compliance therewith, are hereby waived by the parties to whom they accrued.

5.5.7 The costs of the arbitration, including the fee and expenses of the Arbitrator, shall be borne by the losing party.

5.5.8 The procedures contained in Section 5.4 shall be applicable only to alleged violations of this Article. Discharge or discipline of employees for violation of this Article shall be subject to the grievance and arbitration procedures of Article 11.

ARTICLE 6

WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES

6.1 There shall be no strikes, picketing, sympathy strikes, leafleting or work disruption or stoppages of any kind because of jurisdictional disputes.

6.2 When conflicting claims for work on the Project are submitted to a Contractor, the dispute shall be resolved pursuant to agreed upon Jurisdictional Dispute Procedures, as adopted by the National Building & Construction Trades Department, or by the Mechanical Allied Crafts (“MAC”) (attached hereto as Exhibit A), or by the National Construction Alliance (“NCA”) (attached hereto as Exhibit B) and incorporated herein respectively, depending upon whether the Unions with conflicting claims are all affiliated with the same national body. The parties recognize that these Plans may be amended from time to time. In the event a jurisdictional dispute arises between two or more Unions that are not affiliated with the same jurisdictional dispute resolution procedure, the dispute shall be handled in accordance with and resolved as described in the procedure attached hereto as Exhibit C, which is incorporated herein by reference.

ARTICLE 7

COORDINATOR

7.1 Swinerton Inc., as the Coordinator, is responsible for the administration and application of this Agreement.

7.2 The Coordinator shall endeavor to facilitate harmonious relations between the Contractors and Unions signatory hereto and will conduct the monthly joint Labor/Management meeting referred to in Article 8 below. The Coordinator shall not be responsible for the acts of the Contractors or Unions signatory hereto, and will not be a party to any arbitration or litigation arising out of this Agreement.
ARTICLE 8

JOINT LABOR/MANAGEMENT MEETINGS

8.1 A joint Labor/Management meeting will be held on a monthly basis between the Coordinator, the Contractors and the signatory Unions. The purpose of these meetings is to promote harmonious labor/management relations, ensure adequate communications and advance the proficiency and efficiency of the Craftsperson and the Contractors on the Project. These monthly meetings will also include discussion of the scheduling and productivity on work performed on the Project.

8.2 A Pre-Job Conference will be held prior to the commencement of work to establish the scope of work in each Contractor’s contract. When a contract has been let to a Contractor(s) covered hereby, a Pre-Job Conference and/or Mark-Up Meeting shall be required upon request of any Union(s), Contractor(s) or the Coordinator.

8.3 The Contractor performing the work shall have the responsibility for making work assignments in accordance with Section 6.1 of this Agreement. The work assignments shall be made in writing. Any craft objecting to the Contractor’s proposed assignment of work shall have ten (10) working days from the date of the mark-up meeting to submit written objections to the Contractor before the Contractor makes the work assignments final.

8.4 The Coordinator will schedule and attend all Pre-Job and Mark-Up Meetings and participate in discussions as they pertain to the terms and conditions of this Agreement.

ARTICLE 9

MANAGEMENT RIGHTS

9.1 The Contractor(s) retains full and exclusive authority for the management of their work forces for all work performed under this Agreement. This authority includes, but is not limited to the right to:

A. Plan, direct and control the operation of all the work.

B. Decide the number and types of employees required to perform the work safely and efficiently.

C. Hire, promote and layoff employees as deemed appropriate to meet work requirements and/or skills required.
D. Require all employees to observe the Contractor’s Project Rules, Security and Safety Regulations, consistent with the provisions of this Agreement. These Project Rules and Regulations shall be reviewed and mutually agreed upon at the Pre-Job meeting and supplied to all employees and/or posted on the jobsite.

E. Discharge, suspend or discipline employees for just cause.

F. Assign and schedule work at its sole discretion and determine when overtime will be worked. There shall be no refusal by a craft to perform work assigned, including overtime work that is authorized by the craft’s local collective bargaining agreement, however, individual craftsmen shall not be required to work overtime unless specifically dispatched for overtime work. Any cases of a craft’s refusal to work overtime shall be subject to the grievance procedure.

G. No local rules, customs or practices, other than those specifically enumerated in this Agreement, are applicable.

H. Utilize any work methods, procedures or techniques and select and use any type or kind of materials, apparatus or equipment regardless of source, manufacturer or designator (in accordance with Article 21).

I. The foregoing listing of management rights shall not be deemed to exclude other functions not specifically set forth herein. The Contractors, therefore, retain all legal rights not specifically enumerated in this Agreement.

ARTICLE 10

WORK RULES

10.1 The selection of craft foremen and general foremen shall be entirely the responsibility of the Contractor(s), it being understood that in the selection of such foremen, the Contractor(s) will give first consideration to the qualified individuals available in the local area. Foremen and general foremen shall take orders from the designated Contractor(s) representatives.
10.2 There shall be no limit on production by employees nor restrictions on the full use of tools or equipment. Craftspersons using tools shall perform any of the work of the trade and shall work under the supervision of the craft foremen.

10.3 The Contractor(s) may assign one (1) foreman and up to twelve (12) journeymen to any one crew or to any one service. Apprentices, and other non-journeymen classifications, may also be assigned to a crew and are not included in the journeyman count.

10.4 Security procedures for control of tools, equipment and materials are solely the responsibility of Contractor(s).

10.5 A badge system may be used to check in and out. Each employee must personally check in and out. The Contractor(s) will provide adequate facilities for check in and out in an expeditious manner. Time will be deducted from the employee’s pay for late starting and/or early quitting. Excessive instances or late starting and/or early quitting will be cause for termination.

10.6 Employees shall be at their place of work (as designated by the Contractor at the pre-job meeting) and ready to work at the starting time and shall remain at their place of work performing their assigned functions until quitting time. A reasonable time will be allowed for employees to put company and personal tools in secured storage and return to the parking lot by quitting time. The parties reaffirm their policy of a fair day’s work for a fair day’s wage.

10.7 Slowdowns, standby crews and featherbedding practices will not be tolerated.

10.8 It is understood by the Contractor(s) and agreed to by the Union(s), that the employees of the Contractor(s) will perform the work requested by the Contractor(s) without having any concern or interference with any other work performed by any employees of the Owner or others who are not covered by this Agreement including, but not limited to, maintenance and operations.

10.9 Contractors shall provide rest periods in accordance with Industrial Welfare Commission Order No. 16-2001. Any dispute regarding rest and meal periods this section shall be resolved exclusively under the provisions of Article 11 of this Agreement.

10.10 All foremen will remain with their crews and supervise such crews in the performance of their duties.
There shall be no interference with vendor or supplier deliveries of equipment, apparatus, machinery and construction materials to the jobsite since such deliveries shall not fall under this Agreement. Unloading of the above will be performed by signatory Contractors’ employees.

The Contractor(s) will furnish facilities for storage of tools, adequate sanitary facilities and clean, heated, dry change rooms. However, Contractor(s) will incur no liability for loss, theft, or damage to personal tools left in tool storage not provided by the Contractor(s). The Contractor(s) has the right to take any reasonable action deemed necessary to control tool losses. Personal tools when brought onto the jobsite at time of employment may be inventoried as to type and number of tools and condition. Tool provision and losses will be handled according to the individual craft local agreements.

The Contractor(s) and the Unions recognize the necessity for promoting efficiency and agree that no rules, customs or practices shall be permitted that cause overmanning, limit production or increase the time required to do the work, and no limitation shall be placed upon the amount of work which an employee shall perform, nor shall there be any restrictions against the use of any kind of machinery, tools or labor-saving devices. However, the lawful manning provisions of the applicable craft’s local collective bargaining agreement shall be recognized.

Welding tests will be administered by the Contractor(s). Such initial welding tests may be taken either “on-site” or “off-site” at the Contractor’s option. Individuals who take the test “on-site” will be paid two (2) hours pay at the regular straight time hourly rate. If such test takes more than two (2) hours, actual time will be paid. Welding and welding test requirements applied by Owner to the Contractor(s) working on the Project shall be the same as those applied to Contractor(s) working on projects outside the scope of the Agreement.

Employees shall receive a one-half hour lunch period with pay and meals at the expense of the Contractor(s) if the employee is required to work beyond ten (10) consecutive hours (not including the regular one-half hour lunch period), and after working each additional four (4) hours. If meals are not provided, a meal allowance of $10.00 will be paid in lieu thereof.

ARTICLE 11

GRIEVANCE PROCEDURE

It is mutually agreed that any question arising out of and during the term of this Agreement involving its interpretation and application (other than jurisdictional
disputes or certain safety disputes as defined below) shall be considered a grievance.

11.2 A grievance shall be considered null and void if not brought to the attention of the Contractor(s) within ten (10) working days after the incident which initiated the alleged grievance occurred.

11.3 Grievances shall be settled according to the following procedure:

Step 1

The Steward and the grievant shall attempt to resolve the grievance with the craft supervisor.

Step 2

In the event the matter remains unresolved in Step 1 above, within five (5) working days, the alleged grievance in writing may then be referred to the Business Manager of the Craft involved and the Labor Relations representative of the Contractor for discussion and resolution.

Step 3

In the event the matter remains unresolved in Step 2 above within five (5) working days, the grievance in writing may then be referred to the General President (GP) or the General President's designated representatives of the Craft involved and the Manager of Labor Relations of the Contractor or the Manager's designated representative, and the Coordinator for discussion and resolution.

Step 4

If the grievance is not settled in the preceding steps within five (5) working days, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of both parties. The request for arbitration and/or the request for an extension of time must be in writing with a copy to the Coordinator. An Arbitrator selected from a permanent panel of Arbitrators consisting of Gerald McKay, William Riker, Thomas Angelo, Barry Winograd and Robert Hirsch will hear grievances filed pursuant to this Article. Should the parties be unable to mutually agree on the
selection of an Arbitrator from among those on the panel, selection for that given arbitration shall be made by alternately striking names from the list of names on the panel until the parties agree on an Arbitrator or until one name remains. The first party to strike a name from the list shall be the party bringing forth the grievance. In the event the last remaining Arbitrator is not available in a reasonable time to hear the grievance and the parties have not mutually agreed to extend the time for arbitration, the last stricken Arbitrator will be selected. A reasonable time is defined as fifteen (15) days where the grievance concerns employment discharge and thirty (30) days for all other grievances.

The Arbitrator’s decision shall be submitted in writing and shall be final and binding on all parties signatory to this Agreement. The expense of arbitration, including the cost of the Arbitrator and the cost of necessary expense required to pay for facilities for the hearing of cases, shall be borne by the losing party. The Arbitrator’s decision shall be confined to the question posed by the grievance and the Arbitrator shall not have authority to modify, amend, alter, add to or subtract from, any provision of this Agreement.

11.4 The Contractors, as well as the Unions, may bring forth grievances under this Article.

ARTICLE 12

UNION RECOGNITION AND REPRESENTATION

12.1 Employees hired by the Contractor(s) shall, as a condition of employment, become and remain members in good standing of the appropriate Union within eight (8) days following the date of employment.

12.2 The Contractor(s) recognizes the Unions signatory hereto as the sole and exclusive collective bargaining representatives for its craft employees on the Project.

12.3 Authorized representatives of the Unions shall have access to the site during established working hours, provided they do not unduly interfere with the work of the employees, and further provided, that such representatives fully comply with the visitor safety and security rules established for the Project.

12.4 A Steward shall be a working journeyman appointed by the authorized union representative of the Local Union(s) who shall, in addition to work as a journeyman, be permitted to perform during working hours such Union(s) duties as cannot be
performed at other times which consists of those duties assigned by the Business Manager or Business Agent. The Union(s) agrees that such duties shall be performed as expeditiously as possible and the Contractor(s) agrees to allow the Steward a reasonable amount of time for the performance of such duties. It is understood and agreed that the Steward’s duties do not include any matters relating to referral, hiring and termination. The Steward shall not leave the work area without notifying the appropriate supervisor.

12.5 The Steward will be paid at the journeyman wage for the job classification in which the Steward is employed.

12.6 The working Steward will be subject to discharge for just cause to the same extent as other employees provided, however, that the Union shall be notified twenty-four (24) hours prior to the discharge.

12.7 The Steward shall remain on the job until its completion, or until no more than three (3) employees are left on the job, provided the Steward is qualified to perform the work to be done; unless removed by the Business Manager.

ARTICLE 13

REFERRAL

13.1 Contractors performing construction work on the Project described in the Agreement shall, in filling craft job vacancies, utilize and be bound by the registration facilities and referral systems established or authorized by the Unions signatory hereto when such procedures are not in violation of Federal law. The Contractor(s) shall have the right to reject any applicant referred by the Union(s), in accordance with Article 19.

13.2 The Contractor(s) shall have the unqualified right to select and hire directly all supervisors above general foreman it considers necessary and desirable, without such persons being referred by the Union(s).

13.3 In the event referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor(s) for employees within a forty-eight (48) hour period after such requisition is made by the Contractor(s) (Saturday, Sunday and holidays excepted), the Contractor(s) shall be free to obtain employees from any source. These employees shall be recognized as temporary employees. These temporary employees shall be replaced by qualified journeymen when available.
13.4 The Unions shall exert their utmost efforts, including requesting assistance from other Local Unions, to recruit sufficient number of skilled Craftspersons to fulfill the labor requirements of the Contractors.

13.5 Recognizing the special needs of this Project and the acute shortage of skilled craftspeople, the Unions shall consider a Contractor’s request to transfer key employees to work on this Project in a manner consistent with the Union’s referral procedures.

**ARTICLE 14**

**NON-DISCRIMINATION**

14.1 The Unions and Contractors shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, religion, Vietnam veteran or Vietnam Era status, disability as identified in the Americans with Disabilities Act or any other basis recognized by law.

**ARTICLE 15**

**APPRENTICES**

15.1 Recognizing the need to maintain continuing support of programs designed to develop adequate numbers of competent workers in the construction industry, the Contractor(s) will employ apprentices in the respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured.

15.2 The apprentice ratios will be in compliance with the applicable provisions of the California Labor Code and Prevailing Wage Rate Determination.

15.3 There shall be no restrictions on the utilization of apprentices in performing the work of their craft provided they are properly supervised.

**ARTICLE 16**

**WAGE SCALES and FRINGE BENEFITS**

16.1 All employees covered by this Agreement shall be classified and paid in accordance with the applicable wage rate and fringe benefits contained in the appropriate MLA which have been negotiated by the historically recognized bargaining agencies and in
compliance with the applicable general prevailing wage determination made by the Director of Industrial Relations pursuant to the California Labor Code.

16.1.1 Since this Project spans two counties covered by different prevailing wage determinations, it is agreed by the parties to this Agreement that if a Contractor has work within its scope in both Contra Costa County and San Joaquin County, then such Contractor shall pay all its construction craft employees performing work on the Project the wage and fringe benefit rates applicable to Contra Costa County regardless of the specific location of such work.

16.2 During the period of construction on this Project, the Contractors agree to recognize and put into effect such increases in wages and recognized fringe benefits as shall be negotiated between the various Unions and the historically recognized local bargaining unit on the effective date as set forth in the applicable MLA. The Unions shall notify the Contractors in writing of the specific increases in wages and recognized fringe benefits and the date on which they become effective.

16.3 The Contractors hereby adopt and agree to be bound by the written terms of the legally established local trust agreements specifying the detailed basis on which payments are to be made into, and benefits paid out of, such appropriately qualified employee fringe benefit funds established by such appropriate MLA. The Contractors authorize the parties to such local trust agreements to appoint Trustees and successor Trustees to administer the trust funds, and hereby ratify and accept the Trustees so appointed as if made by the Contractors.

16.4 Wages due shall be paid to all employees weekly, not later than on Friday, and not more than three (3) days’ wages may be withheld and shall be paid before the end of the work shift. Payment shall be made by check with detachable stub.

16.5 When an employee is discharged, the employee shall be paid wages due immediately. An employee laid off or terminated shall be given a termination slip immediately upon termination of work. The termination slip shall be completed stating the reason for termination, and the employee’s copy shall have, in addition to the firm’s name, the firm’s address. If an employee voluntarily terminates, wages due shall be paid in accordance with California State Law.

**ARTICLE 17**

**HOURS OF WORK, OVERTIME and SHIFTS**

17.1 Hours of Work: The work week will start on Monday and conclude on Sunday. Eight (8) hours per day shall constitute a standard work day between the hours of 6:00 a.m. and 5:30 p.m. with one-half (1/2) hour designated for lunch midway through the
shift. Forty (40) hours per week, Monday through Friday, shall constitute a regular week’s work. The foregoing provisions of this Article are applicable unless otherwise provided in the General prevailing Wage Determinations made by the Director of Industrial Relations pursuant to the California Labor Code. Nothing herein shall be construed as guaranteeing any employee eight (8) hours per day or forty (40) hours per week.

17.2 Overtime: Overtime will be in compliance with the applicable General prevailing Wage Determination made by the Director of Industrial Relations pursuant to the California Labor Code.

17.3 Shifts: The Contractor(s) shall have the right to establish shifts for any portion of the work in accordance with this Section.

17.3.1 If two (2) or three (3) shifts are worked, the first shift shall consist of eight (8) hours of continuous work exclusive of a one-half (1/2) hour non-paid lunch period, the second shift shall consist of seven and one-half (1/2) hours of continuous work exclusive of a one-half (1/2) hour non-paid lunch period and the third shift shall consist of seven (7) hours of continuous work exclusive of a one-half (1/2) non-paid lunch period, all for eight (8) hours pay.

17.3.2 Shift work may be performed at the option of the Contractor(s) but, when performed, it must continue for a period of not less than five (5) consecutive working days. The straight time work week shall be considered to start with the day shift on Monday and end with the conclusion of the second or third shift on the fifth day.

17.3.3 To the extent permitted by the applicable provisions of the California Labor Code, the Contractor(s), with one week’s notice to the Union(s), may establish a four (4) day per week, ten (10) hour per day work shift. The regular work week shall be from Monday through Thursday. Pay for each of these four (4) days shall be ten (10) hours at the straight time hourly rate.

17.3.3.1 Friday may be worked as a voluntary make-up day in those cases where the work is shut down due to inclement weather or an emergency situation. If a Friday is worked, the pay shall be one and one-half (1 ½) times the straight time hourly rate for the first ten (10) hours worked. All work in excess of ten (10) hours shall be paid two (2) times the straight time hourly rate. If a sixth or seventh day is worked, the pay shall be two (2) times the straight time hourly rate.
ARTICLE 18

HOLIDAYS

18.1 Holidays will be in compliance with the applicable General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to the California Labor Code.

ARTICLE 19

REPORTING PAY

19.1 Any employee reporting for work and for whom no work is provided, except when given notification not to report to work, shall receive two (2) hours pay at the regular straight time hourly rate. Any employee who starts work shall receive four (4) hours pay at the regular straight time hourly rate. Any employee who works beyond four (4) hours shall be paid for actual hours worked.

19.1.1 Whenever minimum reporting pay is provided for employees, they will be required to remain at the project site available for work for such time as they receive pay, unless released sooner by the principal supervisor of the Contractor(s) or its designated representative.

19.1.2 The provisions of this Section are not applicable where the employee voluntarily quits or is out by reason of a strike, in which case the employee shall be paid for the actual time worked.

19.2 It will not be a violation of this Agreement when the Owner or Contractor(s) consider it necessary to shut down because of an emergency situation that could endanger life or property. In such cases, employees will be compensated only for the actual time worked. In the case of a situation described above whereby the Owner or Contractor(s) request employees to wait in a designated area available for work, the employees will be compensated for the waiting time.

ARTICLE 20

TRAVEL, SUBSISTENCE and ZONE PAY

20.1 Travel, subsistence and zone pay will be in compliance with the applicable General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to the California Labor Code.
ARTICLE 21

HEALTH AND SAFETY

21.1 The employees covered by the terms of this Agreement shall at all times, while in the employ of the Contractor(s), be bound by the safety rules and regulations as established by the Owner and Contractor(s) and in accordance with OSHA/Cal-OSHA. These rules and regulations will be published and posted at conspicuous places throughout the Project.

21.2 In accordance with the requirements of OSHA/Cal-OSHA, it shall be the exclusive responsibility of each Contractor(s) on the Project to assure safe working conditions for its employees and compliance by them with any safety rules contained herein or established by the contractor(s). Nothing in this Agreement will make the Unions(s) liable to any employee or to other persons in the event that injury or accident occurs.

21.3 A convenient supply of cold and potable drinking water shall be provided by the Contractor(s).

21.4 This Project shall be a drug free workplace. Workers shall not possess, use, be under the influence of, provide, dispense, receive, sell, offer to sell alcohol and/or controlled substances as defined by law while on the Owner’s property. Violation of this provision shall subject the worker to discipline up to and including termination.

ARTICLE 22

SECURITY OF MATERIAL, EQUIPMENT and TOOLS

22.1 Security procedures for the control of tools, equipment and materials shall be solely the responsibility of the Contractor(s).

22.2 All employees will comply with the security procedures established by the Contractor(s) and the Owner.

22.3 Theft and/or loss of the Owner’s tools and equipment are a major concern on the Project. The Owner’s Security Regulations will be strictly enforced.

22.4 Violations or failure to comply with the Owner’s Security Regulations while on the Project jobsite may result in termination and/or exclusion from the Project jobsite.
ARTICLE 23

CALL-INS

23.1 When employees are called in to work at times other than their regularly established shift, they shall be paid not less than four (4) hours at the applicable overtime rate for that day.

ARTICLE 24

HELMETS TO HARDHATS

24.1 The Contractors and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractors and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veteran’s Employment (hereinafter “Center”) and the Center’s “Helmets to Hardhats” program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

24.2 The Unions and Contractors agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE 25

ENTIRE AGREEMENT

25.1 This Agreement represents the complete understanding of the parties. The provisions of this Agreement shall in every instance exclusively apply to and control work performed on the site of the Project and take precedence over provisions of local, area, regional or national labor agreements. Nothing contained in the working rules, by-laws, constitution and other similar documents of the Unions or other Collective Bargaining Agreements, shall in any way affect, modify or add to this Agreement unless otherwise specifically indicated in this Agreement. Practices not part of the terms and conditions of this Agreement shall not be recognized.
25.2 The Unions agree that this Agreement covers all matters affecting wages, hours and other terms and conditions of employment, and that during the terms of this Agreement, neither the Contractor(s), nor the Union(s) will be required to negotiate on any further matters affecting these or any other subject not specifically set forth in this Agreement except by mutual agreement of the Unions involved and the Coordinator.

25.3 Any other agreement or modification of this Agreement must be reduced to writing and signed by the Coordinator and the Unions involved.

ARTICLE 26

GENERAL SAVINGS CLAUSE

26.1 It is not the intention of either the Contractor(s) or the Union(s) parties to violate any laws governing the subject matter of this Agreement. If any Article or provision of this Agreement shall be declared invalid, inoperative, or unenforceable by any competent authority of the executive, legislative, judicial or administrative branch of the federal, state or local government, the parties shall suspend the operation of each such article or provision during the period of invalidity. Such suspension shall not affect the operation of any provision covered in this Agreement to which the law or regulation is not applicable. Further, the Contractor(s) and Union(s) agree that if and when any or all provisions of this Agreement are finally held or determined to be illegal or void by Court of competent jurisdiction, the parties will promptly enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the requirements of an applicable law and the intent of the parties hereto.

ARTICLE 27

DURATION OF AGREEMENT

27.1 This Agreement shall become effective on the day the Owner awards the first contract covered by the scope of this Agreement and shall continue in full force and effect until completion of the scope of the Project. The parties may mutually agree in writing to amend, extend or terminate this Agreement at any time.

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///
///
ATTACHMENT “A”

PROJECT LABOR AGREEMENT
FOR
CCWD ALTERNATIVE INTAKE PROJECT
BETWEEN
SWINERTON INC.
and
SIGNATORY CONTRA COSTA & SAN JOAQUIN COUNTIES
BUILDING CONSTRUCTION TRADES UNIONS
AGREEMENT TO BE BOUND

The undersigned, as a Contractor or Subcontractor (CONTRACTOR) on the CCWD Alternative Intake Project, (hereinafter PROJECT), for and in consideration of the award to it of a contract to perform work on said PROJECT, and in further consideration of the mutual promises made in the “Project Labor Agreement” (hereinafter AGREEMENT), a copy of which was received and is acknowledged, hereby:

(1) Accepts and agrees to be bound by the terms and conditions of the AGREEMENT for this Project, together with any and all amendments and supplements now existing or which are later made thereto:

(2) The CONTRACTOR agrees to be bound by the legally established local trust agreements as set forth in Article 16 of this AGREEMENT.

(3) The CONTRACTOR authorizes the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the CONTRACTOR;

(4) Certifies that it has no commitments or agreements which would preclude its full and complete compliance with the terms and conditions of said AGREEMENT.

(5) Agrees to secure from any CONTRACTOR(S) (as defined in said AGREEMENT) which is or becomes a Subcontractor (of any tier) to it, a duly executed Agreement to be Bound in form identical to this document.

Dated: ____________________________

(Name of Contractor)

(Authorized Officer & Title)

(Name of Prime Contractor or Higher Level Subcontractor)

(Address)

(Phone #) (Fax #)

CCWD Alternative Intake Project
Project Labor Agreement
Page 24 of 36
Signatures

Swinerton Inc.

[Signature]

Contra Costa Building & Construction Trades Council

[Signature]
Greg Feere, Chief Executive Officer

San Joaquin Building & Construction Trades Council

[Signature]
David Thomas, Secretary-Treasurer

Signatory Unions:

Mark Goy
Asbestos Workers Local #16

Tom Scan
Bricklayers and Allied Crafts Local #3

Ray M. -
Cement Masons Local #300

Michael Pardue
Electrical Workers Local #302

Dale R. Bridger
Boilermakers Local #549

[Signature]
For
Bub Trujillo
Northern California Regional Council of Carpenters

Robert Johnson
Cement Masons Local #400

[Signature]
Julie K. Choo
Electrical Worker Local #595

CCWD Alternative Intake Project
Project Labor Agreement
Page 25 of 36
Hod Carriers Local #166

Iron Workers Local #118

Iron Workers Local #378

Laborers Local Union #73

Operating Engineers Local #3

Painters District Council #16

Plasters Local #66

Sheet Metal Workers Local #104

Teamsters Local #315

United Association Local #159
APPENDIX A

Mechanical Allied Crafts Work Assignment Procedures

The Mechanical Allied Crafts (MAC) Unions are committed to the principle that there shall be no work disruptions on any MAC designated projects and that any disputes involving work assignments among MAC Unions will be resolved expeditiously and, if possible, before the work begins. To this end, MAC Unions have formed Joint Jurisdictional Committees to resolve any outstanding issues and update, if necessary, existing jurisdictional agreements. MAC Local Unions are also engaging in direct and continuing consultations to resolve jurisdictional issues at the local level. The goal is to alleviate work assignment issues among the MAC Unions by having MAC Local Unions establish written work assignment practices within their geographic region that can serve as a roadmap for contractors on MAC designated projects.

The MAC Unions recognize the need for a mechanism to expeditiously resolve jurisdictional issues in the event that two or more MAC Unions are unable to resolve a particular matter. The MAC Unions have adopted the following procedures that will only apply to jurisdictional disputes between or among MAC Unions and their Local Unions on MAC designated projects where the contractor responsible for the work in question has agreed to be bound by these procedures by signing below indicating agreement and acceptance of these procedures. Work assignment disputes involving Unions not part of MAC or on projects not designated as MAC projects may not be resolved through these procedures:

1. Work assignments are the sole responsibility of the contractor that directly hires the craft workers and is responsible for the performance of the work.

2. For each MAC designated project, the contractor(s) shall conduct a pre-job meeting. At the pre-job meeting, each contractor will present their intended work assignments. In the event that a contractor makes a work assignment that is contrary to an established local area assignment practice that has been agreed to in writing by the MAC Local Unions, the contractor’s assignment shall be changed to the agreed upon local area assignment practice provided that:

3. Any Local Union to which an assignment change is made must demonstrate that it can refer in a timely manner, competent craft workers who can safely and efficiently perform the work tasks in question. The Local Union may be required to
provide proof of necessary journeyman certifications, safety training and similar qualifications.

(b) In the event that a work assignment change is implemented, the contractor shall not be required to become a signatory to an area-wide collective bargaining agreement to which the contractor is not currently a party. The MAC Local Unions agree that in such instance the Local Unions will supply the required craft workers to the contractor provided the contractor agrees in writing to abide by the terms of the applicable collective bargaining agreement but only for the MAC project.

(c) Any arrangements agreed upon to allow for inter-union supply of workers during periods of worker shortages affecting some of the MAC Local Unions will not be precedent setting for future work assignments.

3. Any disagreement regarding a work assignment may be submitted for resolution to the MAC permanent Mediator/Arbitrator by any MAC Local Union or contractor. The MAC Mediator/Arbitrator will schedule a hearing in the location of the disagreement within three working days of receipt of the request. The hearing process shall be as follows:

(a) The parties in disagreement will have an opportunity to present their respective positions. Each party will complete its presentation within one half-hour. Each party will have fifteen minutes for rebuttal.

(b) Upon conclusion of the presentations and rebuttals, the Mediator/Arbitrator will conduct a mediation conference with the parties in an attempt to arrive at a mutually satisfactory resolution. The mediation effort will not exceed two hours.

(c) In the event that mediation is not successful, the Mediator/Arbitrator shall have full authority as Arbitrator to render a final and binding decision. In rendering his decision, the Arbitrator shall apply the criteria set forth in Article V, Section 3 of the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry or any successor plan adopted in the future by the Building and Construction Trades Department. The decision will be in writing and served upon the parties via e-mail within three working days from the close of the hearing. The decision will not require an opinion.

(d) The fees and expenses of the Mediator/Arbitrator shall be borne equally by the parties if the matter is resolved during mediation or by the losing party or parties, as designated by the Mediator/Arbitrator, if the matter is decided by the Mediator/Arbitrator. To ensure prompt payment, MAC will pay the Mediator/Arbitrator directly but the responsibility to pay the fees and expenses will remain the responsibility of the applicable MAC Local Union(s) and/or contractor, which will reimburse MAC within ten days of receipt of the request for reimbursement.
4. Agreements reached during mediation and decisions of the Mediator/Arbitrator shall be final, binding and conclusive on the MAC Local Unions and contractors involved on the particular MAC project where the disagreement arose and neither the MAC Unions nor the contractor may seek to resolve the matter in any other forum.

Signed this 9th day of January 2004.

[Signature]

United Association of Plumbers, Pipefitters & Sprinklerfitters

[Signature]

International Association of Sheet Metal Workers

[Signature]

International Association of Heat and Frost Insulators & Asbestos Workers.

[Signature]

International Brotherhood of Electrical Workers.

[Signature]

International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers.

[Signature]

International Union of Elevator Constructors
APPENDIX B

National Construction Alliance
Jurisdictional Policy

The jurisdictional boundaries of basic trade and building trade unions are relatively well defined. The vast majority of work task assignments are undisputed. The three basic trades forming the National Construction Alliance have set forth their respective core jurisdictions for the construction industry, attached hereto as Appendix 1 through 3. The basic trades are committed to honoring their respective, well-established core jurisdictions.

However, when jurisdictional disputes arise, they frequently dominate not only the relationship between the disputing labor organizations but also the relationship between those organizations and the contractor or owner. It is vital to the interests of those working in the construction industry that jurisdictional questions be resolved efficiently and without disruption to the construction process. The NCA is committed to working with owners and contractors to establish a more modern system reflecting the current reality within the construction industry for the resolution of jurisdictional disputes. Accordingly, the NCA will work to facilitate the informal resolution of jurisdictional issues where owners or contractors so desire. Alternatively, the NCA endorses the following Jurisdictional Disputes Resolution Procedure, for use on a project-by-project or agreement basis where an owner seeks a formal jurisdictional dispute resolution procedure.

Terrence M. O'Sullivan
General President
Laborers International Union of North

Vincent J. Giblin
General President
International Union of Operating Engineers North America

Douglas J. McCarron
General President
United Brotherhood of Carpenters and Joiners of America
Jurisdiction Dispute Resolution Procedure

National Construction Alliance

All questions, complaints or disputes dealing with a determination of craft jurisdiction shall be resolved through the application of the following jurisdictional criteria and procedures.

Work assignments should be made by the contractor and jurisdictional questions, complaints or disputes should be resolved on the basis of the following jurisdictional criteria. In the first instance, questions, complaints or disputes should be resolved on the basis of agreements between the unions, including both international and local area agreements. Where there is no such agreement or the agreement is insufficient to resolve the particular question or dispute, consideration should then be given to both contractor preference and to local area practice. The relative weight to be given to contractor preference as compared to local area practice will vary depending on the circumstances, for example, the inherent weight of reasons advanced by a contractor justifying its preference versus the quality and uniformity of the local area practice.

Jurisdictional disputes shall be resolved through the following procedure:

1. Disputes shall be referred initially to the business representatives of the unions involved in the dispute and to the contractor’s authorized representative, who shall then meet at a location acceptable to all parties. Normally, a jurisdictional dispute will be identified and the meeting between the disputing unions and the contractor’s authorized representative will occur at the pre-job conference. If identification and discussion of the dispute does not occur at the pre-job conference, identification and discussion shall occur as promptly as circumstances permit.

2. Jurisdictional disputes which cannot be resolved at the local level within seven days of being identified may be referred to the international unions involved within five days thereafter. This step shall be deemed exhausted seven days after referral.

3. Jurisdictional disputes not resolved at the local or international union levels may be referred by any party to arbitration within five days of exhaustion of Step two. Referral to arbitration shall be accomplished by submission of a written request for referral to arbitration to the Executive Vice President of the NCA, ray@ncabuild.org or (fax)
202.347.1661, who shall be responsible for administration of the arbitral process. The parties will choose a permanent arbitrator and an alternate to hear disputes arising under this procedure. The Executive Vice President of the NCA will make arrangements for the timely hearing of the dispute by the permanent arbitrator, or the alternate if the permanent arbitrator is not available.

There shall be no strikes or work stoppages because of any jurisdictional dispute. Pending the resolution of any jurisdictional dispute, the work will continue as originally assigned by the contractor. Illegal strikes or work stoppages because of jurisdictional dispute shall be subject to a fine of up to $50,000 per shift where deemed appropriate by the permanent arbitrator. Claims of the illegal strike or work stoppage subject to such fine may be filed by the contractor directly at Step 3 of this procedure for hearing by the permanent arbitrator. Any determination or resolution made pursuant to this procedure, including determination or resolution by arbitration or mediation, shall be final and binding on the disputing unions and the contractor on this project only and shall not establish a precedent on other project sites.

The following rules shall apply in any arbitration conducted under this procedure:

(a) The jurisdictional dispute or question shall be determined or mediated based upon the jurisdictional criteria, including the priority of the criteria, set forth above.

(b) The hearing will be conducted in the geographical area where the jurisdictional dispute has occurred. Each of the parties’ (Employer/Union(s)) cases shall be presented by a representative of their respective organizations. No party will be represented by legal counsel nor will any legal counsel make an appearance at the hearing proceedings.

(c) Each party to the dispute will have one-half hour to present its case. Witnesses may appear but will not be placed under oath. The introduction of any witnesses shall not extend the one-half hour time period. There shall be no objections made during the presentation of cases.

(d) Upon the completion of the one-half hour initial presentations each party will be entitled to a fifteen-minute rebuttal period. Such rebuttals will be heard in the same order as the initial presentations. There shall be no objections made during the rebuttal period. Witnesses may be recalled.

(e) At the conclusion of presentations and rebuttals, the Arbitrator will conduct a mediation conference between the parties in an attempt to arrive at a
satisfactory resolution to the dispute. This mediation shall not exceed two hours in duration. In the event that mediation resolves the dispute, such resolution will be reduced to writing and signed by the parties and the Arbitrator.

(f) In the event that mediation is not successful, the Arbitrator will close the proceedings and shall have full authority to render a final and binding decision in resolution of the jurisdictional dispute. The decision will be in writing and served upon the parties via e-mail within three working days from the day following the hearing. The decision will not require an opinion.

The losing party(s) as determined by the Arbitrator shall be responsible for the fee and expenses of the Arbitrator. Said fee and expenses will be invoiced to the losing party(s) by the office of the National Construction Alliance.

APPENDIX C

Jurisdiction Dispute Resolution Procedure

In the event a jurisdictional dispute arises while the parties are attempting to negotiate an alternative resolution mechanism either party may refer the jurisdictional dispute to the General Presidents of the affected unions, and if the General Presidents cannot resolve the dispute within five (5) business days of the dispute being referred to them for resolution, the dispute shall be resolved as follows:

The Panel of Permanent Arbitrators shall be composed of: John Kagel, Gerald McKay, Thomas Angelo, Robert Hirsch and Barry Winograd. The Arbitrator shall be selected by alternately striking the names of Arbitrators from the list of five (5) permanent Arbitrators. Each craft shall have three (3) days to cross off the names of two Arbitrators. If a party does not respond, this means any Arbitrator is acceptable. The remaining Arbitrator shall serve as the Arbitrator who shall hear the dispute on an expedited basis and resolve the dispute. The Arbitrator shall render his decision within three (3) days of the hearing.

In rendering his decision, the Arbitrator shall determine:
1. First, whether a previous agreement of record that was unabrogated as of January 1, 2007, or applicable agreement, including a disclaimer agreement, between the National or International Unions to the dispute governs;

2. If the Arbitrator cannot resolve the matter based on No. 1 then if the Arbitrator finds that a previous decision of record governs the case, the Arbitrator shall apply the decision of record in rendering his decision except under the following circumstances. After notice to the other parties to the dispute, prior to the hearing, that it intends to challenge the decision of record, if a trade challenging the decision of record is able to demonstrate that the recognized and established prevailing practice in the locality of the work has been contrary to the applicable decision of record, the Arbitrator may rely on such prevailing practice rather than the decision of record. If the craft relying on the decision of record demonstrates that it has performed the work in dispute in the locality of the job as a prevailing practice, then the Arbitrator shall apply the decision of record in rendering his decision. If the Arbitrator finds that a craft has improperly obtained the prevailing practice in the locality through raiding, the undercutting of wages or by the use of vertical agreements, the Arbitrator shall rely on the decision of record rather than the prevailing practice in the locality;

3. If no decision of record is applicable, the Arbitrator shall then consider the established trade practice in the industry and prevailing practice in the locality; and;

4. Only if none of the above criteria is found to exist, the Arbitrator shall then consider that because efficiency, cost or continuity and good management are essential to the wellbeing of the industry, the interests of the consumer or the past practices of the employer shall not be ignored.

The Arbitrator shall comply with the Code of Professional Responsibility for Arbitrators of Labor Management Disputes jointly adopted by the National Academy of Arbitrators, the American Arbitration Association and the Federal Mediation and Conciliation Service. The Arbitrator shall set forth the basis for his decision and shall explain his findings regarding the applicability of the above criteria. If lower-ranked criteria are relied upon, the Arbitrator shall explain why the higher-ranked criteria were not deemed applicable. The Arbitrator's decision shall only apply to the job in dispute.

5. Unabrogated agreements of record are applicable only to the parties signatory to such agreements. Decisions of record are applicable to all trades.
6. The Arbitrator is not authorized to award back pay or any other damages for a misassignment of work. Nor may any party to this Plan bring an independent action for back pay or any other damages, based upon a decision of an Arbitrator.

7. Each party to the arbitration shall bear its own expense for the arbitration and agrees that the fees and expenses of the Arbitrator shall be borne by the losing party or parties.

8. **ENFORCEMENT**

   A. If the claims of the challenging trade are upheld in the decision of the Arbitrator, and work onsite is being performed on the eighth calendar day after the issuance of that decision, the assigned trade shall cede the work in question to the challenging trade and withdraw its members from said work, and the affected Employer shall employ members of the challenging trade on said work. This shall be termed the effective date of the decision. If the eighth calendar day after the issuance of said decision falls on a weekend or on a holiday, the effective date shall be the next working day. Holidays shall include and be limited to New Year’s Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving Day, and Christmas Day.

   B. The Arbitrator shall have no authority to undertake any action to enforce its decision after a hearing beyond informing the affected parties of its decision. Rather, it shall be the responsibility of the prevailing party to seek appropriate enforcement of a decision. The prevailing party in any enforcement proceeding shall be entitled to recover its reasonable costs and attorney fees from the non-prevailing party. In the event the Arbitrator is made a party to, or is otherwise required to participate in any such enforcement proceedings for whatever reason, the non-prevailing party shall bear all reasonable costs, attorney fees, and any other expenses incurred by the Arbitrator in those proceedings.