

Attachment X.B.5.-3

**PROJECT LABOR AGREEMENT
FOR
INFRASTRUCTURE SITE WORK FOR THE ADELAAR PROJECT**

Town of Thompson, New York

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EXHIBIT 1 – ADELAAR INFRASTRUCTURE PLAN

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ARTICLE 1 – PREAMBLE

This Agreement is entered into this 20th day of June, 2014, by and between EPR Concord II, L.P. (herein after "Owner") and the Local Unions affiliated with the Hudson Valley Building and Construction Trades Council (herein after "Unions") on behalf of itself and its' affiliated unions for the project.

WHEREAS, the Owner desires to provide for the sufficient, safe, quality and timely completion of construction related to infrastructure and site work for the development of Adelaar (the Project) in a manner designed to afford the best work at the lowest reasonable cost to Owner, and the shortest duration, and the advancement of public policy interests, embodied in the competitive bidding statutes;

WHEREAS, this Project Labor Agreement ("Agreement") will foster the achievement of these goals including:

1. Standardizing the terms and conditions governing the employment of labor on the Project;
2. Receiving negotiated adjustments as to work rules, wages/benefits and staffing requirements from those which otherwise might not provide the same.
3. Providing comprehensive and standardized mechanisms for the settlement of work disputes, including those related to jurisdiction;
4. Ensuring a reliable and competent source of skilled and experienced labor;
5. Furthering public policy objectives as to improved employment opportunities for local workers, minorities, women and the economically disadvantaged in the construction industry;
6. Eliminating the costly delays of potential strikes, slowdowns, walkouts, picketing and other disruptions arising from work disputes and promote labor harmony and peace for the duration of the Project;
7. Expediting the construction process and otherwise minimizing the risk to public safety and inconvenience caused by ongoing construction; and
8. Permitting wide flexibility and shift hours and times.

WHEREAS, the parties subject to the terms of this Agreement desire the stability, security and work opportunities afforded by this Project Labor Agreement;

Now, therefore, it is agreed as follows:

ARTICLE 2 – PARTIES COVERED BY THIS AGREEMENT AND GENERAL CONDITIONS

Section 1. Parties by this Agreement

The parties covered by and subject to the terms of this Agreement are:

- a. The Hudson Valley Building and Construction Trades Council together with its affiliated Local Unions as identified on signature page.
- b. Contractors and sub-contractors (regardless of tier) who have been awarded contracts pursuant to the bidding procedures applicable to this Project.
- c. EPR Concord II LP, and any and all affiliates of Owner directly involved in the development of Adelaar.
- d. All parties shall be required to sign this Agreement.

Section 2. Certain Definitions

- a. Throughout this Agreement, the Hudson Valley Building and Construction Trades Council ("HVBCTC") and its affiliated Local Union members are sometimes referred to singularly and collectively as "Union(s)".
- b. "Collective Bargaining Agreements" means those local union agreements identified in Schedule A attached hereto.
- c. "Contractor(s)" means contractor(s) who have been awarded contracts for this Project and subcontractors of any tier engaged by Contractor(s) for on-site Project construction work;
- d. "Employee(s)" means employee(s) of Contractor(s);
- e. "Owner" means EPR Concord II L.P. as Developer and any and all affiliates or successors of Owner directly involved in the development of Adelaar.
- f. "Project" means all the infrastructure and site work on the site owned and leased by EPR Concord II L.P. as indicated on the attached Exhibit 1, Adelaar Infrastructure Plan.
- g. "Owners Rep" shall mean Acumen Development, LLC and Roggeman Consulting, LLC or replacements or successors thereof.

Section 3. Supremacy Clause

This Agreement, together with the Collective Bargaining Agreements (Schedule A) represents the complete understanding of all parties covered by this Agreement and supersedes any national, local or other collective bargaining agreement of any type which would otherwise apply to this Project, in whole or in part. Where a subject covered by the provisions, explicit or implicit, of this Agreement is also covered by provisions set forth in the Collective Bargaining Agreements the provisions of this Agreement shall prevail. No practice, understanding or agreement between a Contractor and a Local Union which is not explicitly set forth in this Agreement shall be binding on this Project unless endorsed in writing by the Owner or its authorized representative.

Section 4. Liability

The liability of any Contractor and/or any Union under this Agreement shall be several and not joint. The Owner and any Contractor shall not be liable for any violations of this Agreement by any other Contractor or Party or violations of this Agreement by any other party or contractor, which is not under Owner's or Contractor's direct and exclusive control.

Section 5. Bid Specifications

- a. The bid specifications of the Project and future bid specifications will require that all successful bidders, contractors and subcontractors of whatever tier are bound by this Agreement. With the exemption of the Owners Rep, and those contractors who qualify under the local contractor set aside program, all contractors and subcontractors regardless of tier shall be required to be signatory to Local CBA's prior to the start of work on the project, if it is work covered under this agreement. It is understood that nothing in this Agreement shall be construed as limiting the sole discretion of Owner in determining which bidder(s) shall be awarded contracts for the Project. It is further understood that Owner has sole discretion at any time to terminate, delay or suspend the Project, in whole or part.
- b. The bid specifications of the project will require that all successful bidders, contractors and sub-contractors who meet the qualifications of the local contractor set aside program shall not be required to sign the local CBA's but rather a Letter of Assent (Exhibit 3) prior to the start of the Project.

ARTICLE 3 – SCOPE OF THIS AGREEMENT

This agreement shall be as defined and limited by the following sections of this Article 3.

Section 1.

- a. The Agreement applies to: (i) all Site Work related to the construction of roads and utilities infrastructure improvements, (unless specifically excluded in this agreement) on the owned or leased properties of the Owner as generally shown on the Adelaar Infrastructure Plan dated June 2014 and attached to this Agreement as Exhibit 1, including roads and utilities on Parcel C of the Adelaar Site Plan attached hereto as Exhibit 2; (ii) Site Work related to construction of roads and utilities necessary to access Parcel B on the Adelaar Site Plan attached hereto as Exhibit 2, and (iii) Site Work up to the boundaries of the area shown on the Adelaar Site Plan as Section A. Site Work including all clearing, erosion control work, environmental remediation, water, sewer, drainage, infrastructure, demolition of structures, curbs, paving and sidewalks, retaining walls, roads, bridges, storm culverts, wetlands protection, street lighting, and landscaping (unless specifically excluded in this agreement) shall be subject to this Agreement.
- b. Utility work provided by gas, electric and cable companies, which is not performed by utility company employees, shall be subject to the terms of this Agreement.

Section 2. Excluded Work Scope

With the exception of roads and utilities (storm, water, sewer, gas, electric, etc.) for residential housing which is covered work under this agreement, all site work, excavation and construction of townhouses, villas and housing shall be excluded under this agreement. This shall not preclude union contractors from bidding or being awarded contracts.

Section 3. Project Labor Agreements

- a. The Owner agrees to enter into a separate project labor agreement for work not covered in this Agreement on approximately 500 acres +/- as generally shown on the attached Site Plan (Exhibit 2) as Parcel B. The parties intend that site work related to the construction of the Gaming Facility, as described in the license application to the New York Gaming Facility Location Board on or about June 30, 2014 (other than a casino/hotel which is the subject of a separate project labor agreement) shall be included in a mutually acceptable project labor agreement.
- b. Unless precluded by New York State or federal law, off-site town, county or state road and infrastructure work will be subject to the terms of this Agreement. The parties agree that Articles, 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15 and 16 of this agreement shall apply, unless by mutual agreement the parties to this agreement agree to modify this Agreement to be in compliance with applicable laws for such off-site construction.
- c. A side letter or memorandum of understanding will be drafted in reference to future property development on the owned or leased properties of the Owner as described in the attached Site Plan (Exhibit 2) as Parcel C.

Section 4. Term

This Agreement commences on the date of execution, and shall remain in effect for the duration of the Project(s) on this site. It is further understood that this Agreement, together with all of its provisions shall remain in effect for all Site Work as defined in Article 3 of this agreement, including construction, after initial projects are complete in which the Owner is responsible for, paying or financing.

Section 5. Excluded Persons

The following persons are not subject to the provisions of the Agreement, even though performing non-construction work on the Project site:

- a. Superintendents, supervisors (excluding general and forepersons specifically covered in Schedule A) engineers (excluding Operating Engineers), inspectors and testers, quality control/ assurance personnel, timekeepers, mail carriers, clerks, office workers. Deliverers and suppliers (except those in Section 5d), messengers, non-manual employees, and all professional engineering, planning, architectural, administrative and management persons;
- b. Employees, consultants and representatives of the Owner; not performing construction;

- c. Persons engaged in laboratory or specialty testing or inspections not ordinarily performed by a member of a Trade Union (excludes surveyors);
- d. Employees and entities engaged in off-site manufacture, modifications, repair, maintenance, assembly, painting, handling or fabrication of components, materials, equipment or machinery or involved in deliveries to and from the Project site, except for local deliveries of fill, ready mix, asphalt, granular materials, construction debris service, and the moving of equipment or all building material such as precast or steel after the first drop which are covered by this Agreement;
- e. Employees of the Contractor, other contractors or subcontractors excepting those performing manual, on-site construction labor who will be covered by this Agreement and Schedule A;
- f. Deliveries to the site with the exception of items specifically called out in Article 3, Section 5d;
- g. Employees engaged in on-site equipment maintenance/warranty work or start up work typically not performed by trades or when required for warranty or training purposes. When a Contractor has an employee already certified by the relevant manufacturer to make warranty repairs on that Contractor's equipment, that employee shall be used; when a Contractor has an employee already qualified to make warranty repairs, although not certified by the equipment manufacturer to do so, that employees shall be used to make repairs working under the direction of a manufacturer certified warranty representative; and
- h. Employees engaged in geophysical testing (whether land or water) other than boring for core samples.

ARTICLE 4 – REFERRAL AND EMPLOYMENT

Section 1. Referral

- a. Contractors agree to hire craft employees covered by this Agreement through the job referral systems and/or hiring halls where the referrals meet the qualifications set forth in items 1. 2. 3 and 4 of Section 3(a) of this Article established in the Local Unions' area Collective Bargaining Agreement or other sources so long as the Contractors do not unlawfully discriminate between prospective employees in violation of existing laws on the basis of Union affiliation, race, religion or gender;
- b. The Local Unions shall exert their utmost efforts to recruit sufficient numbers of skilled craft workers to fill the manpower requirements of the Contractor. The parties to this Agreement support the development of increased numbers of skilled construction workers from the residents of Sullivan County and its immediate vicinity to meet the needs of this Project and the requirements of the industry generally. The Labor Management Cooperative Committee ("LMCC") shall develop a policy work opportunity for Sullivan County Construction Workers and Contractors.

Section 2. Non-Discrimination in Referrals

The local Unions represent that their hiring halls and/or referral systems will be operated in a non-discriminatory manner and in full compliance with all applicable federal, state and local laws and regulations which require equal employment opportunities. Referrals shall not be affected in any way by the rules, regulations, bylaws, constitutional provisions or any other aspects or obligations of union membership, policies or requirements and shall be subject to such other conditions as are established in this Article. No employment applicant shall be discriminated against by any referral system or hiring hall because of the applicant's union membership or lack thereof.

Section 3. Tag Along

- a. Unless specifically called for in this Section or in Article 14, Section 10, no more than 15% per centum (15%) of the employees covered by this Agreement per Contractor by craft, shall be hired through the special provisions below (any fraction shall be rounded to the next highest whole number). Contractors (and their subcontractors and sub-subcontractors) shall be entitled to assign to the Project (subject to the above provisions) to one of the Contractor's "core" employees, and then must hire one journey person referred by the Local.

A Contractor may request by name, and the Union shall honor referral of persons who have applied to the Local Union for Project work or are currently employed by contractor performing work who meet the following qualifications as determined by a Committee of three (3), designated respectively, by the Contractor, the applicable Local Union and a third party mutually agreed upon by the Hudson Valley Building Trade Council and Owner's Representative or Construction Manager:

1. Possess any license required by NYS law for the Project work to be performed;
 2. Have worked a total of at least 1000 hours in the specific construction craft during the prior 2 years;
 3. Were on Contractor's active payroll for at least 60 out of 180 calendar days prior to the start of project work.
 4. Have demonstrated ability to safely perform the basic functions of the applicable trade.
- b. In the event the Local Union is unable to fill any request for qualified employees 24 hours after such request was made to the Union by the Contractor, the Contractor may employ qualified applicants from any other available source. In the event that the Local Union does not have a job referral system, the Contractor shall give the Local Union first preference to refer applicants, subject to the other provisions of this Article. The Contractor shall notify the Local Union of Project, craft employees hired within its jurisdiction from any source other than referral by the Union.
- c. The Committee may also allow a Contractor, subject to the above per centum, to employ socially or economically disadvantaged persons for entry into the construction industry outside of the formal apprenticeship program.
- d. If the Project is subject to the New York State Minority and Women Owned Business Enterprise ("MWBE") program, and New York State Equal Opportunity requirements,

notwithstanding the above provision, a certified MWBE may, with respect to its first 10 hires, request referral by name under the above requirements of up to 50% of the employees covered by this Agreement by craft. In that case, the first name referral must be a general foreperson (if otherwise included in a craft's Schedule A). The 3rd, 5th, 7th and 9th employee may be a name referral. Thereafter, the above 15 per centum referral provision will apply.

- e. In the event a Local Union either fails, or is unable to refer qualified minority or female applicants in percentages equaling Project affirmative action goals as set forth in the Owner's bid specifications (which shall not be greater than percentages established by the State of New York), after 72 hours notice to the union, the Contractor may employ qualified (i.e., successfully completed a 10 hour OSHA Training Course in Construction Safety from a qualified source) minority or female applicants from any other available source.

Section 4. Union Dues/Fringe Benefits

- a. All employees covered by this Agreement shall be subject to the union security provisions contained in the applicable collective bargaining agreement attached hereto, but only for the period of time during which they are performing onsite project work and only to the extent of rendering payment of the applicable monthly union dues uniformly required for union membership in the local union which represents the craft in which the employee is performing project work. No employees shall be discriminated against at the project site because of the employee's union membership or lack thereof. Each Contractor agrees to make all employee authorized deductions for such monthly union dues required under the applicable collective bargaining agreement.
- b. In addition, each Contractor agrees to pay contributions to established and jointly trusted fringe benefit funds (the Funds), such as Health and Welfare, Pension, Annuity, Legal Service, Education and Training, SUB, Apprenticeship, etc. in the amounts designated in the applicable collective bargaining agreement for onsite project work. The Contractors agree to be bound by the written terms of the legally established and jointly trusted Funds specifying the detailed basis on which payments are to be paid into, and benefits paid out of, such Funds but only with regard to project work and only for those employees for whom this Agreement requires such benefit payments. No union, or any union benefit fund trustees, or any other individual affiliated with the union or a Fund shall have any authority under this Agreement or otherwise to audit the financial records of any Contractor that is not signatory to an existing collective bargaining agreement with the union except for the records related to compliance with contribution obligations set forth in the Agreement.
- c.
 1. To insure the full and timely remittance of required fringe benefit contributions to the Funds and dues to the unions, the Owners Rep will work cooperatively with the Funds (or unions, in the case of dues) to verify that the required fringe benefit contributions or dues have been paid.
 2. If a Fund (or Union in the case of dues) considers that a Contractor is delinquent in the payment of fringe benefit contributions or dues, it will notify the Contractor in writing with a copy to the Owners Rep. The Contractor will have forty-five (45) days to make the contributions requested by the Fund or dues, if requested by a union. If after 45 days, the Fund or Union is not satisfied that the Contractor has met its

obligations, the Fund or Union will provide written notification to the Owners Rep and the Contractor at issue (given by certified mail, return receipt requested that a Contractor is delinquent in payment of fringe benefit contributions or dues.

3. The Contractor will have five (5) days from its receipt of the Union's notification to respond to the Union's notification. If the Contractor fails to respond to the Union's notification of delinquency, the Owner or Owners Rep will withhold from sums due to the Contractor the amount of such delinquencies plus any percentage allowed under the applicable collective bargaining agreement up to the amount of sums due to the Contractor, and the Owners Rep will ensure all future payments to the Contractor by joint check to the appropriate fund (or Union, in the case of dues) and the Contractor up to the amount of the claimed delinquency. If the Owners Rep or Owner fails to withhold or there are no funds due to the Contractor which they can withhold, the Union involved may stop work for that specific Contractor. Nothing herein shall result in the Owners Rep being liable and/or responsible for payment of delinquent fringe benefit contributions or dues.

4. If the Fund or Union disagrees with the Contractor's response and continues to believe that there are delinquencies, it will notify the Contractor in writing of such conclusion within five (5) days after receiving the Contractor's response. The Union or Fund will provide a copy of such notification to the Owners Rep who will withhold from money owed to the Contractor an amount equal to the claimed delinquencies and any percent of those delinquencies as may be allowed under the applicable collective bargaining agreement. The Fund or Union may also require the Owner or Owners Rep to make all future payments to the Contractor by joint check to the appropriate Fund (or Union, in the case of dues) and the Contractor up to the amount of the claimed delinquency. The Contractor hereby consents to payments to be made by such joint check to the Fund (or Union, in the case of dues) until all payments of contributions or dues are current and the Fund (or Union, in the case of dues) notifies the Owners Rep of such in writing by certified mail, return receipt requested.

5. If the Contractor and the Fund (or Union, in the case of dues) are unable to resolve any claims for alleged delinquent contributions or dues, the Contractor will have the right to arbitrate the matter pursuant to this Agreement. If the Fund or Union prevails in such arbitration the Owner will pay the delinquencies up to the amount it has withheld. If the Contractor prevails in such arbitration, the Owner or Owners Rep will then release any withholdings to the Contractor if the Contractor has otherwise qualified for payment of such withholdings.

6. The Owners Rep contact in reference to benefit delinquencies shall be:

Name: Richard Kraus

Phone: 303-799-8300

EMAIL: richkraus@acumendev.com

Section 5. Craft Forepersons and General Forepersons

The selection of craft forepersons and/or general forepersons and the number of forepersons required shall be solely the responsibility of the Contractor notwithstanding anything to the contrary in Schedule A. All forepersons shall take orders exclusively from

the designated contractor representatives. Craft forepersons shall be designated as working forepersons at the request of the Contractor.

Section 6. Any Labor Management Fund established shall become part of this agreement and the contributions may be made by deductions from employees, contributions of contractors, and or Owner/Developers.

ARTICLE 5 – UNION REPRESENTATION

Section 1. Local Union Representative

Each Local Union representing on-site Project employees shall be entitled to designate representatives in writing (copy to Contractor involved, Owner, Owner Rep, and the Union), who shall be afforded access to the Project provided they do not interfere with the work and they comply with visitor and safety rules..

Section 2. Stewards

- a. Each Local Union may have the right to designate a working journey person as a steward and an alternate and shall notify the Contractor of the identity of the designated Steward and alternate prior to the assumption of such duties. Stewards shall not exercise supervisory functions. There will be no non-working Stewards on the Project.
- b. In addition to their work as an employee, the Steward shall have the right to receive complaints or grievances and to discuss and assist in their adjustment with the Contractor's appropriate supervisor. Each Steward shall be concerned with the employees of the Steward's Contractor and, if applicable, subcontractors of that Contractor. The Contractor will not discriminate against the Steward in the proper performance of Union duties.
- c. The Stewards shall not have the right to determine when overtime shall be worked, or who shall work overtime except as determined by Contractor pursuant to a Collective Bargaining Agreement provision providing procedures for the equitable distribution of overtime.
- d. The General Contractor shall employ the Labor Steward, Senior Teamster and Lead Engineer. The above referenced employer shall not be required to carry the Steward's, Senior Teamster or Operating Engineer Lead Engineer if there is no work of that particular trade.

Section 3. Layoff of a Steward

Contractors agree to notify the appropriate Local Union twenty four (24) hours prior to the layoff of a Steward, except in cases of discipline or discharge for cause. If a Steward is protected against layoff by a Collective Bargaining Agreement, attached hereto, such provisions shall be recognized to the extent the Steward possesses the necessary qualifications to perform the work required. In any case in which a Steward is discharged or disciplined for just cause, the Local Union involved shall be notified immediately by the Contractor.

ARTICLE 6 – MANAGEMENT’S RIGHTS

Section 1. Reservation of Rights

Except as expressly limited by a specific provisions of this Agreement, Contractors retain full and exclusive authority for the management of their operations including, but not limited to: the right to direct the work force; including determination as to the number to be hired and the qualifications therefore; the promotion, transfer, or the discipline or discharge for a just cause of its employees; the assignment and schedule of work; the promulgation of reasonable Project work rules, and the requirement, timing and number of employees to be utilized for overtime work. Nothing contained herein shall be construed so as to allow direction of an Employee to perform work outside the jurisdiction of that Employees Labor Union affiliation, if any. No rules, customs, or practices as determined by the contractor which limit or restrict productivity or efficiency of the individual, and/or joint working efforts with other employees shall be permitted or observed.

Section 2. Materials, Methods & Equipment

Subject to conformance with the quality and specifications in the Contract Documents, there shall be no limitation or restriction upon the Contractor's choice of materials, techniques, methods, technology or design, or regardless of source or location, upon the use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finished (except that all rebar for use in the cast-in place, on-site construction will be cut and bent in accordance with Section 2(a) of this Article, or pre-assembled materials, tools or other labor-saving devices. Contractors may, without restriction, install or use materials, supplies or equipment regardless of their source. The on-site installation or application of such items shall be performed by the craft having jurisdiction over such work pursuant to Collective Bargaining Agreement attached hereto; provided, however, it is recognized that other personnel having special qualifications may participate, in a supervisory capacity, in the installation, check-off or testing of specialized or unusual equipment or facilities as designated by the Contractor. There shall be no restrictions as to work which is not performed at the Project site, unless specifically spelled out in Schedule A.

Section 2(a). Reinforcing bars (rebar) may be cut and bent off-site and shall not be part of this Agreement. There shall be no reinforcing such as mats, caissons, etc. delivered to the site pre-tied or welded.

ARTICLE 7 – WORK STOPPAGE AND LOCKOUTS

Section 1. No Strikes, No Lock Out

There shall be no strikes, sympathy strikes, picketing, work stoppages, slowdown, hand billing, demonstrations or other disruptive activity at the Project site for any reason by any Local Union or Employee against any Contractor or Employer while performing work at the Project site, except for non-payment of wages and benefits as per Schedule A. There shall be no other Local Union or concerted Employee activity which disrupts or interferes with the operation of the Project. Failure of any Local Union or employee to cross any picket line established by any union signatory or non-signatory to this Agreement or the picket or demonstration line of any other organization, at or in proximity to the Project site is a violation of this Article 7. There shall be no lockout at the Project by Owner or any Contractor. Contractors and Local Unions shall take all steps necessary to ensure compliance with this Section 1.

Section 2. Discharge for Violation

A Contractor may discharge any Employee violating Section I above and any such Employee will not be eligible thereafter for referral under this Agreement for a period of one hundred (100) days.

Section 3. Notification

If a Contractor contends that any party covered by this Agreement has violated this Article 7, it will notify the CM and/or the Local Union involved advising of such fact with copy to the BCTC and to the Local Union. The BCTC shall instruct, order or otherwise use its best efforts to cause the Employees, Contractors and/or the Local Unions to immediately cease and desist from any violation of this Article 7. The BCTC complying with these obligations shall not be liable for the unauthorized acts of a Local Union or its members.

Section 4. Expedited Arbitration

Any party alleging a violation of Section 1 of this Article 7 may utilize the expedited procedure set forth below (in lieu of, in addition to, any actions at law or equity).

- a. A party invoking this procedure shall notify JJ Piersons or Richard Adelman, who shall act as Arbitrator under this expedited arbitration procedure. Copies of such notification will be simultaneously sent to the alleged violator, the CM and if a Local Union is alleged to be in violation, then to the HVBCTC.
- b. The Arbitrator shall thereupon, after notice to all parties covered as to time and place, hold a hearing within Forty Eight (48) hours of receipt of the notice invoking the procedures if it is contended that the violation still exists. The hearing will not, however, be scheduled for less than twenty four (24) hours after the notice to the BCTC required by Section 3, above.
- c. All notices pursuant to this Article 7, may be by telephone, telegraph, hand delivery or fax, confirmed by overnight delivery, to the parties involved. The hearing may be held on any day including Saturdays and Sundays. The hearing shall be completed in one session, which shall not exceed Eight (8) hours duration with no more than Four (4) hours being allowed to either side to present its case, and conduct its cross examination unless otherwise agreed. A failure of any party to attend the hearing shall not delay the hearing of evidence by those present or the issuance of an award by the Arbitrator.
- d. The sole issue at the hearing shall be whether a violation of Section I above has occurred. If a violation is found to have occurred, the Arbitrator shall issue a Cease and Desist Order restraining such violation and serve copies on the party determined to be in violation. 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 solely for other proceedings, if any. The decision shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without an opinion. If any involved party desires an opinion, one shall be issued within fifteen (15) calendar days, but its issuance shall not delay compliance with, or enforcement of, the decision.

A decision issued under this procedure may be enforced by any court of competent jurisdiction upon the filing of this Agreement together with the decision. Notice of the filing of such enforcement proceedings shall be given to the party involved. In any court proceeding to obtain a temporary or preliminary order enforcing the arbitrator's

Award as issued under this expedited procedure, the involved Party and Contractor waive their right to a hearing and agree that such proceedings may be ex-parte, provided notice is given to opposing counsel. Such agreement does not waive any party's right to participate in a hearing for a final court order of enforcement or in any contempt proceeding.

- e. Any rights created by statute or law governing arbitration proceedings which are inconsistent with this procedure set forth in this Article, or which interfere with compliance thereto, are hereby waived by the Contractors and Unions to whom they accrue.
- f. The fees and expenses of the Arbitrator shall be paid by the losing party.

Section 5. Arbitration of Discharges for Violation

Procedures contained in Article 9 shall not be applicable to any alleged violation of this Article, with the single exception that an Employee discharged for violation of Section 1, above, may have recourse to the procedures of Article 9 to determine only if the Employee did, in fact, violate the provisions of Section 1 of this article; but not for the purpose of modifying the discipline imposed where a violation is found to have occurred.

ARTICLE 8 – LABOR MANAGEMENT COOPERATIVE COMMITTEE

Section 1. The parties bound by this Agreement shall establish a local Labor Management Cooperative Committee (LMCC) to promote harmonious labor-management relations, insure adequate communications and advance the proficiency of craft employees and the industry. This committee shall be chaired by the Labor Relations Coordinator which shall be mutually agreed upon by the President of the Building Trades, and the Owners Rep, the LMCC will meet at periodically scheduled intervals (not less than every month) for a discussion of the efficiency of the Project as is consistent with this Agreement and any amendments or addenda thereto. Participation shall be encouraged from all incumbent Contractors and Unions signatory to this Agreement. The Labor Relations Coordinator shall administer and coordinate the implementation of this Agreement, chair the LMCC, develop policies and procedures of operation, and publish meeting agenda and issue minutes of each LMCC meeting.

Section 2. The LMCC will make every effort possible to anticipate jurisdictional conflicts or other potential and disruptive labor issues and take appropriate measures to minimize any adverse impact to the Project.

Section 3. The principal Union(s) and Labor Relations Coordinator shall rule on any Agreement interpretations or clarifications, which may be required. Such rulings or clarifications, as may be required, shall be reduced to writing, jointly signed by the LMCC, distributed to the signatory parties and reviewed at the next LMCC meeting. The Labor Relations Coordinator reserves the exclusive right to interpret this Agreement for all signatory Employers, program manager and subcontractors (at any tier). Such "reserved right" shall not apply to interpretations of this Agreement on behalf of the Unions.

Section 4. The functions, decisions, rulings and any directives that may be promulgated by the Labor Relations Coordinator, or LMCC under this Agreement are exclusive to this Project(s) and shall not apply to other area projects.

Section 5. The LMCC along with the Owner Rep and president of the Building Trades Council along with those involved trades shall be responsible for working out agreement or arrangements in reference to specialty work.

Section 6. Labor shortages or possible shortages shall be immediately addressed by the LMCC Coordinator, the President of the Building Trades and the Owners Rep.

ARTICLE 9 – GRIEVANCE & ARBITRATION PROCEDURE

Section 1. Procedure for Resolution of Grievances

Except as provided in Article 17, any question, dispute or claim arising out of, or involving the interpretation or application of this Agreement (other than jurisdictional disputes or alleged violation of Article 7, Section 1) shall be considered a grievance and shall be resolved pursuant to the exclusive procedures of the steps described below; provided, in all cases, that the question, dispute or claim arose during the term of this Agreement.

Step 1:

- a. When any party covered by this Agreement feels aggrieved by a claimed violation of this Agreement, the party shall, through the Local Union business representative, job steward or Contractor give notice of the claimed violation to the work site representative of the involved Contractor. To be timely, such notice of the grievance must be given within fourteen (14) calendar days after the act, occurrences or event giving rise to the grievance. The business representative of the Local Union, the job steward, the Party and the work site representative of the involved Contractor shall meet and endeavor to adjust the matter within forty eight (48) hours after timely notice has been given. If they fail to resolve the matter within the prescribed period, the grieving party may, within seven (7) calendar days thereafter, pursue Step 2 of the grievance procedure by serving the involved Contractor and the CM or its assignee with written copies of the grievance setting forth a description of the claimed violation, the date on which the grievance occurred, and the provisions of the Agreement alleged to have been violated. Grievances and disputes settled at Step 1 are non-precedential except as to the specific Local Union, non-affiliated Party Employee and contractor directly involved unless the settlement is accepted in writing by Owner, or its designated representative as creating a precedent.
- b. Should any party to this Agreement have a dispute (excepting jurisdictional disputes, alleged violations of Article 7, Section 1 or Delay Disputes under Article 17) with any other party to this Agreement and, if after conferring, a settlement is not reached within fourteen (14) calendar days, the dispute shall be reduced to writing and proceed to Step 2 in the same manner as outlined in subparagraph (a) above for the adjustment of Employee grievances.

Step 2:

The Business Manager or designee of the involved party, together with the representatives of the Council, the involved Contractor, and Owner, or its designated representative shall meet within seven (7) calendar days of service of the written grievance arrive at a satisfactory settlement.

Step 3:

- a. If the grievance shall have been submitted but not resolved in Step 2, any of the participating Step 2 entities may, within twenty one (21) calendar days after the initial Step 2 meeting, submit the grievance in writing (copies to other participants) to J.J. Pierson or Richard Adelman Arbitrators under this procedure. The Labor Arbitration Rules of the American Arbitration Association shall govern the conduct of the arbitration hearing, at which all Step 2 participants shall be parties. The decision of the arbitrator shall be final and binding on the involved Contractor, local union and employees. The fees and expenses of such arbitrations shall be paid by the losing party. Named Arbitrators shall be alternate beginning with J.J. Pierson.
- b. Failure of the grieving party to adhere to the time limits set forth in this Article shall render the grievance null and void. These time limits may be extended only by written consent of the parties at the particular step where the extension is agreed upon. The Arbitrator shall have authority to make decisions only on the issues presented to him and shall not have the authority to change, add to, delete or modify any provision of this Agreement.

Section 2. Limitation as to Retroactivity

No arbitration decision or award may provide retroactivity of any kind exceeding Sixty (60) calendar days prior to the date of service of the written grievance on the involved Contractor or Local Union.

Section 3. Participation by Owner or its Designated Representative

Construction Manager shall be notified by the involved parties of all actions at Steps 2 and 3 and, at its election, may participate in full in all proceedings at these steps, including Step 3 arbitration.

ARTICLE 10 – JURISDICTIONAL DISPUTES**Section 1. No Disruptions**

- a. There will be no strikes, sympathy strikes, work stoppages, slowdowns, picketing or other disruptive activity of any kind arising out of any jurisdictional dispute. Pending the resolution of the dispute, the work shall continue uninterrupted. No jurisdictional dispute shall excuse a violation of Article 7.
- b. No jurisdiction dispute shall affect coordination of the various contractors at the Project or the progress of the Project.
- c. The Signatories to this agreement adhere to the principle that jurisdictional disputes can not and shall not interfere with the project.

- d. Every effort will be made by the Employer to resolve all anticipated disputes over work assignments. These efforts will include pre-job conferences, jurisdictional mark-up meetings and similar such conferences. Pre-job conferences must be held by each Employer prior to the field work actually starting. The Owners Rep is recognized as a party of interest in the resolution of any and all jurisdictional disputes and their Labor Relations Manager will be notified of all meetings and may attend and participate. Resolution of jurisdictional disputes will not include any "over manning" or the requirement to assign employees to any work functions other than the number that may be required to safely execute the work. No back pay or any other monetary penalty shall be assessed against any Employer in the resolution of jurisdictional disputes.

Section 2. Assignment

The assignment of work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

Section 3. Procedure for Settlement of Disputes

- a. Any Union having a jurisdictional dispute with respect to Project work assigned to another Union will submit the dispute in writing to the Administrator, Plan for the settlement of Jurisdictional Disputes in the Construction Industry within seventy two (72) hours and send a copy of the letter to the other Contractor involved, and the Local Union involved. Upon receipt of a dispute letter from any Local Union, the Administrator will invoke the procedures set forth in the Plan to resolve the jurisdictional dispute. The jurisdictional dispute letter shall contain the information described in Article IV of the Plan.
- b. Any Contractor involved in a jurisdictional dispute on this Project shall continue working and without disruption of any kind.

Section 4. Limitations

The Jurisdictional Dispute Arbitrator shall have no authority to assign work to a double crew, that is, to more employees than the minimum required by the Contractor to perform the work involved; nor to assign the work to employees who are not qualified to perform the work. This does not prohibit the establishment, with the Agreement of the involved Contractor, of composite crews where more than one employee is needed for the job. The aforesaid determinations shall decide only to whom the disputed work belongs.

Section 5. No Interference with Work

There shall be no interference or interruption of any kind with the work of the Project while any jurisdictional dispute is being resolved. The work shall proceed as assigned by the Contractor until finally resolved under the applicable procedure of this Article. The award shall be confirmed in writing to the involved parties. There shall be no strike, work stoppage or interruption in protest of any such award.

ARTICLE 11 – HOURS OF WORK, PREMIUM PAYMENTS, SHIFTS & HOLIDAYS

Section 1. Work Week and WorkDay

- a. The standard work week shall consist of forty (40) hours or work at straight time rates either a five (5) day work week Monday – Friday; eight (8) Hours per day, plus one half (1/2) hour unpaid lunch period each day, or a four (4) day work week Monday – Thursday; ten (10) hours per day, plus one half (1/2) hour unpaid lunch period each day. When on a 4 day 10 hour per day work week, Friday shall be used as a makeup day at straight time. Saturday make-up days shall be as per Schedule A Agreements.
- b. The Day Shift shall commence between the hours of 6:00 a.m. and 4:30 p.m. Starting and quitting times shall occur at the staging areas designated by the Contractor. Other shifts shall similarly commence and end at uniform times agreed upon by the Contractor and Union. Sub-contractor starting times maybe different then the established starting time of the general contractor or construction manager.
- c. Notice – Contractors shall provide not less than ten (10) days prior notice to the Unions as to the workweek and work hour schedules to be worked or such lesser notice as may be mutually agreed upon.

Section 2. Overtime

Overtime pay for hours outside of the standard work week and work day, described in Section 1, paragraph (a) above, shall be paid at time and a half, Saturdays shall be at premium time and Sundays shall be at double time whichever is less. There will be no restriction upon the Contractor's scheduling or overtime or the non-discriminatory designation of employees who shall be worked. There shall be no pyramiding of overtime pay under any circumstances. The Contractor shall have the right to schedule work so as to minimize overtime. The Owner or Designee must approve any overtime that affects the total cost of the Project.

Section 3. Starting Times and Shifts

- a. There shall be a uniform start time for all Contractors and employees or each shift in accordance with Section 1 above.
- b. Flexible Schedules – To the extent that they do not have a cost impact on the Project, scheduling of shift work may remain flexible in order to meet Project schedules and existing Project conditions. Shifts must be worked with a minimum of five (5) consecutive workdays and must be scheduled with the HVBCTC with not less than five (5) work days notice to the party. Regularly scheduled shifts will not be paid at overtime rate, but rather as per Schedule "A" Agreements.
- c. Flexible Starting Times – Shift starting times will be adjusted by the Contractor as necessary to fulfill Project requirements subject to the notice requirements of paragraph (b).
- d. Shift work may be scheduled on either a five (5) day (5-8 hrs) or four (4) day (4-10 hrs) work week basis and shift shall be paid as per Schedule "A" Agreements.

Section 4. Holidays

- a. Schedule – There shall be eight recognized holidays on the Project:

New Years Day	Labor Day
Presidents Day	Veteran’s Day
Memorial Day	Thanksgiving Day
Fourth of July	Christmas Day

All holidays shall be observed on the dates designated by Law. In the absence of such designation, they shall be observed on the calendar date except those holidays which occur on Saturday shall be observed on Friday and those holidays which occur on Sunday shall be observed on the following Monday.

- b. Payment – Regular holiday pay, if any, and/or premium pay for the work performed on such a recognized holiday shall be in accordance with the applicable Collective Bargaining Agreement (Schedule A).
- c. Exclusivity – No holidays other than those listed in Section 4 – (a) above shall be recognized or observed.

Section 5. Reporting Pay

- a. Employees who report to the work location pursuant to regular schedule and who are not provided with work or whose work is terminated early by a Contractor, for whatever reason, shall receive minimum reporting pay in accordance with the applicable Collective Bargaining Agreement. (Schedule A). Should this occur on a scheduled ten (10) hour work day, ten (10) hours minimum reporting pay shall apply in lieu of eight (8) hours where appearing
- b. When an employee who has completed a schedule shift and left the Project site is “called-out” to perform special work of a casual, incidental or irregular nature, the Employee shall receive pay for actual hours worked with a minimum guarantee as may be required by the applicable Collective Bargaining Agreement. (Schedule A).
- c. When an employee leaves the job or work location of his own volition or is discharged for cause or is not working as a result of the Contractor’s invocation of Section 7 below, he shall be paid only for the actual time worked.
- d. Except as specifically set forth in this Article 11, there shall be no premiums, bonuses, hazardous duty, high time or other special payments of any kind.
- e. There shall be no pay for time not actually worked except as specifically set forth in this Article or as specifically provided in a Schedule A.

Section 6. Payment Wages

- a. Payday – Payment shall be made by check, drawn on a New York bank with branches located within commuting distance of the job site. Paychecks shall be issued by the Contractor at the job site by 10 a.m. on Thursdays. In the event that the following Friday is a bank holiday, paychecks shall be issued on Wednesday of that week. Not more than three days wages shall be held back in any period.

Paycheck stubs shall contain the name and business address of the Contractor, together with an itemization of deductions from gross wages.

- b. Termination – Employees who are laid off or discharged for cause shall be paid in full for that which is due them at the time of termination. The Contractor shall also provide the employee with a written statement setting forth the date of lay off or discharge.
- c. Wages and Benefits shall be paid as per applicable schedule A.

Section 7. Emergency Work Suspension

A Contractor may, if considered necessary for the protection of life and/or safety of employees or others, suspend all or a portion of Project work. In such instances, employees will be paid for actual time worked; provided, however, that when a Contractor requests that employees remain at the job site available for work, employees will be paid for “stand-by” time at their hourly rate of pay, by the applicable Schedule A.

Section 8. Injury/Disability

An employee, who, after commencing work, suffers a work-related injury or disability while performing work duties, shall receive no less than eight (8) Hours wages for that day. Further, the employee shall be rehired at such time as said employee is able to return to duties provided there is still work available on the Project for which the employee is qualified and able to perform.

Section 9. Time Keeping

A Contractor may utilize brassing or other systems to check employees in and out. Each employee must check in and out. The Contractor will provide adequate facilities for checking in and out in an expeditious manner.

Section 10. Meal Period

Employees shall have meal period of not more than one half (1/2) hour duration at the work location between the third and fifth hour of the scheduled shift. A Contractor may, for efficiency of operation, establish a schedule which coordinates the meal periods of two or more crafts. If an employee is required to work through the meal period, the employee shall be compensated in a manner established in the applicable Schedule A. A suitable lunch area shall be established.

Section 11. Break Periods

There will be one (1) ten (10) minute coffee break two (2) hours after the commencement of the workday. Afternoon break shall be as per Schedule A. Lunch break shall be for thirty (30) minutes commencing approximately four (4) hours after the start of the established workday. Coffee may be consumed at the employee's place of work as time permits.

ARTICLE 12 – APPRENTICES

Section 1. Ratios

Recognizing the need to maintain continuing supportive programs designed to develop adequate numbers of competent workers in the construction industry and to provide craft entry opportunities for minorities, women and economically disadvantaged non-minority males, Contractors will employ apprentices in their respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured. Apprentices shall be employed in a manner consistent with the provisions of the appropriate Schedule A Agreement.

Section 2. Department of Labor

To assist the Contractors in attaining a maximum effort on this Project, the parties agree to work in close cooperation with, and accept monitoring by the New York State Department of Labor to ensure that minorities and women from Sullivan County are afforded every opportunity to participate in apprenticeship programs which result in the placement of apprentices on this Project. The Local unions will cooperate with Contractor requests for minority, women or economically disadvantaged referrals to meet this Contractor effort and/or as provided in the Collective Bargaining Agreement.

ARTICLE 13 – SAFETY AND PROTECTION OF PERSON AND PROPERTY

Section 1. Safety Requirements

Each Contractor will ensure that applicable OSHA requirements are at all times maintained on the Project. Employees of the Contractors must perform their work at all times in a safe manner and protect themselves and the property of the Contractor and Owner from injury or harm. Failure to do so will be grounds for discipline, including discharge.

Section 2. Contractor Rules

Employees shall at times be bound by the reasonable safety, security, and visitor rules as established for this Project. Such rules will be published and posted in conspicuous places throughout the Project.

Section 3. Inspections

Owner retains the right to inspect incoming shipments of equipment, apparatus, machinery and construction materials of every kind.

Section 4. Drug/Alcohol Policy

The General Contractor or Owner may adopt a policy with regard to the use of alcohol and illegal drugs. Specific drug and alcohol testing programs consistent with 49 CFR Parts 40 and 382 may be instituted by either the Owner and/or Contractors. Local Union programs that comply with the foregoing standards may be used.

ARTICLE 14 – Miscellaneous Provisions

Section 1. Project Rules

The Owners Rep or General Contractor shall establish such reasonable Project rules as are appropriate for the good order of the Project. These rules will be explained at the pre-job conference and posted at the Project site and may be amended thereafter as necessary. Failure of an employee of a Contractor to observe these rules and regulations shall be grounds for discipline, including discharge. The fact that no order was posted prohibiting a certain type of misconduct shall not be a defense to an employee disciplined or discharged for such misconduct when the action taken is for cause. Unless project work rules violate the CBA or applicable law, "OR" shall have sole discretion over establishing rules onsite.

Section 2. Tools of the Trade

The welding/cutting torch and chain fall are tools of the trade having jurisdiction over the work performed. Employees using these tools shall perform any of the work of the trade. There shall be no restrictions on the emergency use of any tools or equipment for the performance of work within the employee's jurisdiction.

Section 3. Supervision

Employees shall work under the supervision of the craft foreperson or general foreperson.

Section 4. Travel Allowance

There shall be no payment for travel expenses, travel time, subsistence allowance or other such reimbursements or special pay except as expressly set forth in this Agreement or specifically spelled out in Schedule A.

Section 5. Full Work Day

- a. Employees shall be at their staging area at the time established by the Contractor and shall be returned to their staging area by quitting time after performing their assigned functions under the supervision of the Contractor. The parties reaffirm their policy of a fair day's work for a fair day's wage.
- b. There shall be no non-working employees at the Project (e.g. employees whose only work consists of watching equipment, etc.), unless the presence of such employee is required due to normal maintenance (e.g. refueling). There shall be no electrical standby-by employees until the electrical prime contractor has commenced work on the Project. No electrical stand-by employee may remain on the Project after the permanent electrical system is operational.
- c. Temporary services for system coverage, whether during regular working hours or at other times, shall only be required on the specific request of the Contractor and when requested shall be assigned to the appropriate trade with jurisdiction. Such temporary services may be provided by the Contractor's employees already working under this Agreement during their regular work hours. There shall be no stacking of trades on temporary services. In the vent temporary services are claimed by multiple trades, the matter shall be resolved under PLA Article 10.

Section 6. Cooperation

The parties will cooperate in seeking any New York State Department of Labor approvals that may be required for implementation of any terms of this Agreement.

Section 7. Specialty Agreement

The terms of this Agreement shall not apply to work of the Employer that is normally performed under the terms of a National Specialty Agreement including, but not limited to, the National Tank Manufacturer Agreement, the Stack Liner Agreement, the Rubber Liner Agreement or any other Specialty Agreement.

Section 8. Veterans

The employees 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 Unions, "OR" and the Contractors agree to coordinate and maintain an integrated list of veterans from the Sullivan County interested in working on the Project through the "Helmets to Hardhats" program and, to the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

Section 9. Equal Opportunity

- a. Each Union will provide to the Owners Rep, not less than quarterly, a census of its members. Such census report will provide information regarding the number of minority and women members and the status of those members as to apprenticeship and journeyman classification. The first such census reports shall be delivered prior to execution of this.
- b. The Unions agree that their good faith effort enrollment goals for all apprenticeship classes for minorities and women as permitted by New York State Department of Labor procedures.
- c. The Unions agree that seniority or other preference rules may not be utilized to frustrate the diversity goals of the Project the affirmative action, workforce development, and diversity provisions of this Agreement.
- d. The Unions agree that individuals with construction industry experience outside of a unionized workforce from Sullivan County who desire to become members of the various trade unions will be admitted at the status and grade commensurate with the skills acquired from their experience in the trade. Individuals who require additional training to achieve journeyman status will receive such training. The Unions and the Owner/Developer will work together to establish training opportunities for Sullivan County Residents.

Section 10. Local Contractor Set Aside

It is the intent of the Owner/Developer and County of Sullivan IDA to ensure contractors and employees from Sullivan County have an opportunity to bid and work on the project. In many cases contractors from Sullivan County are smaller contractors and may not be signatory to unions and are not union or have ever worked under a project labor agreement. Therefore the following shall apply:

- a. A contractor must meet the following to qualify as a local contractor.

1. Has been in business for a minimum of five years performing the type of work he is contracted to perform.
 2. Has had an established place of business in Sullivan County for a minimum of two years.
 3. Can show proof of proper insurances, and is registered to do business in the State of New York.
- b. Contractor(s) shall not be required to sign local collective bargaining agreements and only be required to sign the Letter of Assent.
- c. Contractors that qualify as local contractors under this section shall be required to adhere to Article 4 with the exception of the 15% tag along in which the following shall apply.
1. A contractor qualifying under the local contractor set aside with respect to its first eight hires shall be allowed up to 50% of its own employees per craft. The 1st, 3rd, 5th and 7th employee may be his own employees. Immediately upon the hiring of his first employee he must hire one employee from the union. After the 8th employee the 15% tag along shall apply. This shall apply per craft.
 2. Company employees will receive the Schedule A wages of the craft work they are performing.

Section 11. Maintenance

For maintenance work which is the exclusive responsibility of the Owner, the parties agree to enter into a separate agreement (contract) for maintenance work, if allowable by law and commercially reasonable. If pre-hire agreements are not allowable by law or statute, the parties to this agreement will allow the Council and affiliated locals all of the same rights and organizing opportunities given to other organizations for the purpose of union representation, if any.

ARTICLE 15 – FUTURE CHANGES IN COLLECTIVE BARGAINING AGREEMENT

Section 1. Changes

- a. Schedule A to this Agreement shall continue in full force and effect until the applicable Contractor and/or Union parties to the Schedule A CBAs notifies the "OR" in writing of the mutually agreed upon changes in provisions of such Agreements which are applicable to the Project, and their effective dates.
- b. It is agreed that any work rule provisions negotiated into future Collective Bargaining Agreements will not apply to work on this Project if such provisions are less favorable to this Project than those contained in the expiring Collective Bargaining Agreements as they pertain to work rules; nor shall any provision be recognized or apply on this Project if it may be construed to apply exclusively, or predominantly, to work covered by this Agreement.
- c. Any disagreement over the incorporation into Collective Bargaining Agreements of provisions agreed upon in the re-negotiation of Area Collective Bargaining Agreement shall be resolved in accordance with the procedure set forth in this Agreement.

Section 2. Labor Disputes During Negotiation of Collective Bargaining Agreements

The parties agree that there will be no strikes, work stoppages, sympathy actions, picketing, slowdown or other disruptive activity or other violations of this Agreement affecting the Project by any parties involved in the re-negotiation of Collective Bargaining Agreements nor shall there be any lockout on this Project affecting any party during the course of such re-negotiations.

ARTICLE 16 – SAVINGS AND SEPARABILITY

Section 1. This Agreement

In the event that the application of any provision of this Agreement is enjoined, on either an interlocutory or permanent basis, or otherwise found in violation of any law, the provision involved shall be rendered, temporarily or permanently, null and void but the remainder of this Agreement shall remain in full force and effect. In such event, this Agreement shall remain in effect for contracts already bid, awarded or in construction. The parties will enter into negotiations for a substitute provision in conformity with the law and the intent of the parties for contracts to be awarded in the future.

Section 2. The Bid Specifications

In the event that Owner's bid specifications, or other action, requiring that a successful bidder be bound by this Agreement is enjoined, on either an interlocutory or permanent basis, or otherwise found in violation of law, such requirement shall be rendered, temporarily or permanently, null and void but this Agreement shall remain in full force and effect to the extent allowed by law. In such event, the Agreement shall remain in effect for contracts already bid, awarded or in construction. The parties will enter into negotiations as to modifications to the Agreement to reflect the court action taken and in the intent of the parties for contracts to be awarded in the future.

Section 3. Non – Liability

In the event of an occurrence referenced in Section 1 or Section 2 of this Article 17, neither Owner nor any Contractor nor any Local Union shall be liable, directly or indirectly, for any action taken, or not taken, to comply with any court order, injunction or determination. Project bid specifications will be issued in conformance with court orders then in effect and no retroactive payments or other action will be required if the original court determination is ultimately reversed.

ARTICLE 17 – DELAY DISPUTES

Section 1. The parties realize the importance of maintaining continuous and uninterrupted performance of the work for the Project, including but not limited to, timely and adequate supply and delivery of materials. In the event that the Owner or Owner's Representative determines, in good faith, that compliance with this Agreement results in objectionable delay to completion of the Project that either jeopardizes the ability for a casino to open in accordance with the requirements of the NYS Gaming Commission or would be avoidable if additional sources of material were made available to the Project (a "Delay Dispute"), the Objecting Party may invoke the Expedited Dispute Resolution

procedures hereunder.

Section 2. The Objecting Party shall notify the Council and applicable Unions, in writing, of its claim of objectionable delay. Within twenty-four hours from the date of the Objecting Party's written notice, the parties shall endeavor to resolve amicably by negotiation any Delay Dispute. The parties shall meet within 24 hours of the Objecting Member's written objection notice to the Union in an effort to resolve the Delay Dispute.

Section 3. The parties shall consider, in good faith, revisions to this Agreement, which would alleviate or reduce any objectionable delay. Any Delay Dispute that is not resolved within forty-eight (48) hours following the Meeting, or within such other period as the parties may agree in writing, shall be finally settled by arbitration administered by the Judicial Arbitration and Mediation Service ("JAMS"), in accordance with the Expedited Procedures provisions of the JAMS Comprehensive Arbitration Rules and Procedures, in effect at the time of the arbitration (the "JAMS Rules"). The award rendered shall be final and binding on the parties. Judgment on the award may be entered in any court of competent jurisdiction.

Section 4. The place of arbitration shall be Sullivan County, New York, and the proceedings shall be conducted in the English language.

Section 5. The arbitration shall be conducted by a sole arbitrator. An arbitration timely submitted in accordance with this Section shall be held before a single Arbitrator, selected by mutual agreement of the Contractor, Owner and Union. The Arbitrator shall be a qualified, disinterested and impartial person, who shall have at least ten (10) years' experience in the development, construction, and/or operation, as applicable, of commercial resort or similar large-scale integrated commercial resort development projects. In the event that the parties are unable to reach agreement on the mutually selected arbitrator, an arbitrator shall be designated through application to JAMS.

Section 6. The costs of arbitration shall be paid by the unsuccessful party(ies), as determined by the arbitrator. The unsuccessful party(ies) shall pay to the successful party(ies) all reasonable out-of-pocket fees and expenses, including reasonable attorneys' fees, incurred by the successful party(ies) in connection with the arbitration, and the fees and expenses of the arbitrator conducting the arbitration. Except with respect to a successful claim by one party that the other party has unreasonably withheld its consent in bad faith, the arbitrator may not award or recommend any damages to be paid by either party.

Section 7. The Union agrees that there shall be no strikes, work stoppages, picketing, slowdowns or other disruptive activities affecting the Project by any Union at any time, including but not limited to, during any Delay Dispute, during the course of any negotiations relating to this Agreement, or in the event that changes to this Agreement are negotiated and implemented.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed and effective this 20th day of June, 2014.

For: Hudson Valley Building and Construction Trades Council

By: L. Todd Diorio
NAME/TITLE

L. Todd Diorio
SIGNATURE

JUNE 20, 2014
DATE

By: _____
NAME/TITLE

SIGNATURE

DATE

For: EPR Concord II L.P.

By: David M. Brain
Authorized Individual
NAME/TITLE

David M. Brain
SIGNATURE

June 20, 2014
DATE

For: LOCAL UNIONS

BY: _____
LOCAL UNION# Print Name Signature Date

BY: _____
LOCAL UNION# Print Name Signature Date

BY: _____
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BY: _____
LOCAL UNION# Print Name Signature Date

Exhibit 1

APPLICANT
 EPT CONCORD II, LLC / EPR CONCORD II, LP
 909 WALNUT, SUITE 200
 KANSAS CITY, MO 64106
 (816) 472-1700 (PHONE)
 (816) 472-5794 (FAX)
 MASTER PLANNER /
 LANDSCAPE ARCHITECT

HART HOWERTON
 HART HOWERTON
 10 EAST 40TH STREET
 NEW YORK, NY 10016
 (212) 683-5631 (PHONE)
 (212) 481-3768 (FAX)

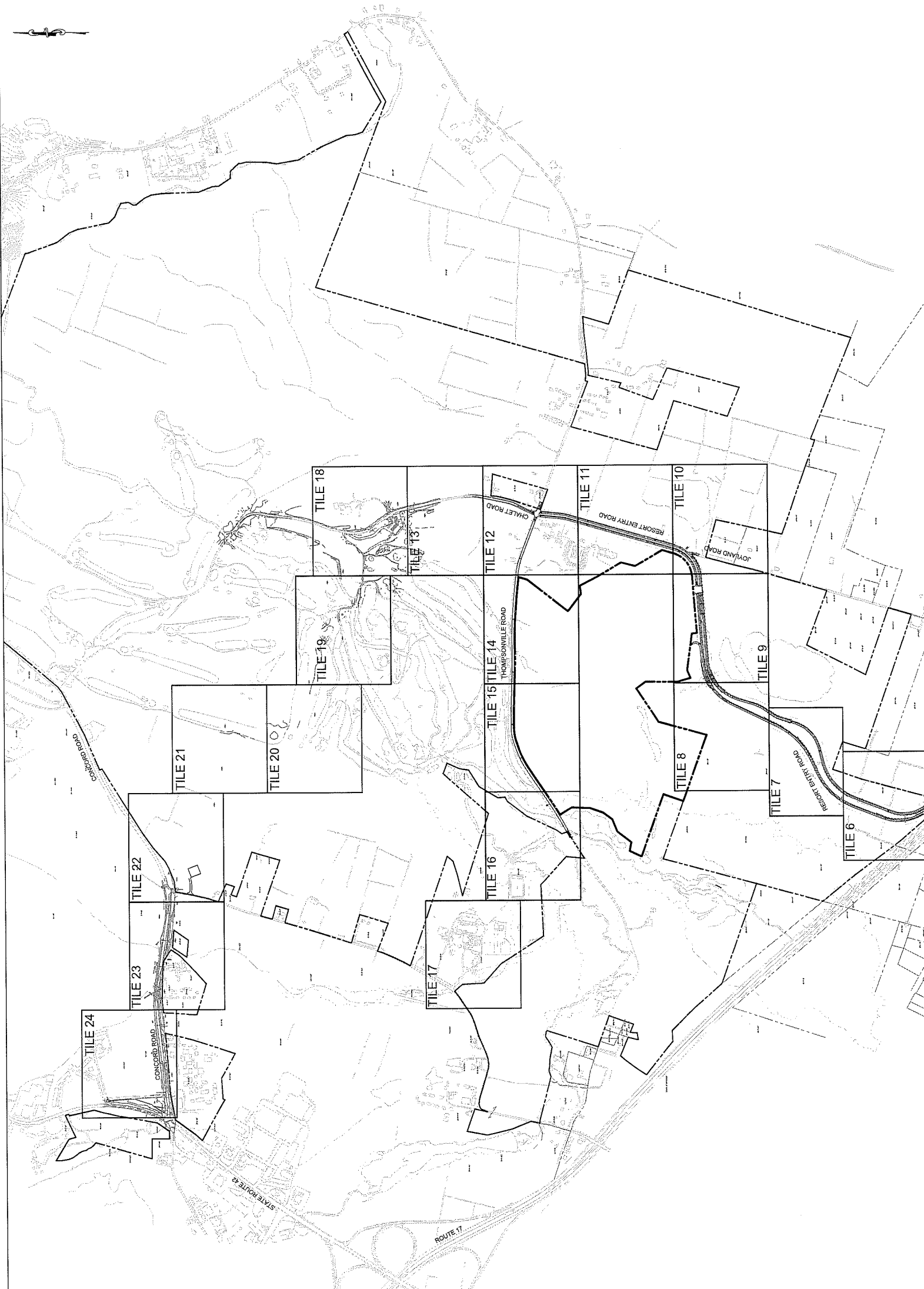
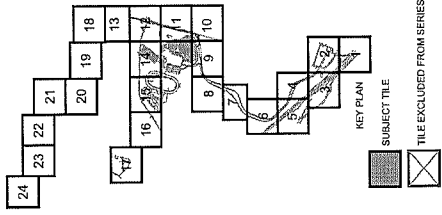


SITE/CIVIL ENGINEER
 AKRF ENGINEERING, P.C.
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 (914) 949-7559 (FAX)

SURVEYOR
 CONTRACTORS' LINE & GRADE
 SOUTH, LLC
 23 NEPPERHAN AVENUE
 ELMSFORD, NY 10523
 (914) 347-3141 (PHONE)
 (914) 347-3120 (FAX)

GEOTECHNICAL CONSULTANT
 MELICK, TULLY AND ASSOCIATES, P.C.
 170 CHANAL ROAD
 SOUTH BOUND BROOK, NJ 08880
 (732) 356-3400 (PHONE)
 (732) 356-9054 (FAX)

STRUCTURAL CONSULTANT
 TITAN ENGINEERS, P.C.
 1241 GRANDVIEW AVENUE
 UNION, NJ 07083
 (908) 624-0044 (PHONE)
 (877) 364-8484 (FAX)



**SITE PLAN SUBMISSION
 NOT FOR CONSTRUCTION**
 NEW YORK STATE EDUCATION LAW 145, SECTION 2209,
 PROVIDES THAT ANY ARCHITECTURAL, ENGINEERING,
 DRAWINGS AND ACCOMPANYING SPECIFICATIONS
 IN ANY WAY, UNLESS IT IS UNDER THE DIRECT
 SUPERVISION OF A LICENSED PROFESSIONAL.

Exhibit 2

Parcel Plan

Legend		
	Parcel A	Casino Hotel & Resort
	Parcel B	Waterpark Lodge, Entertainment Village & Monster Golf
	Parcel C	Future Development Parcels

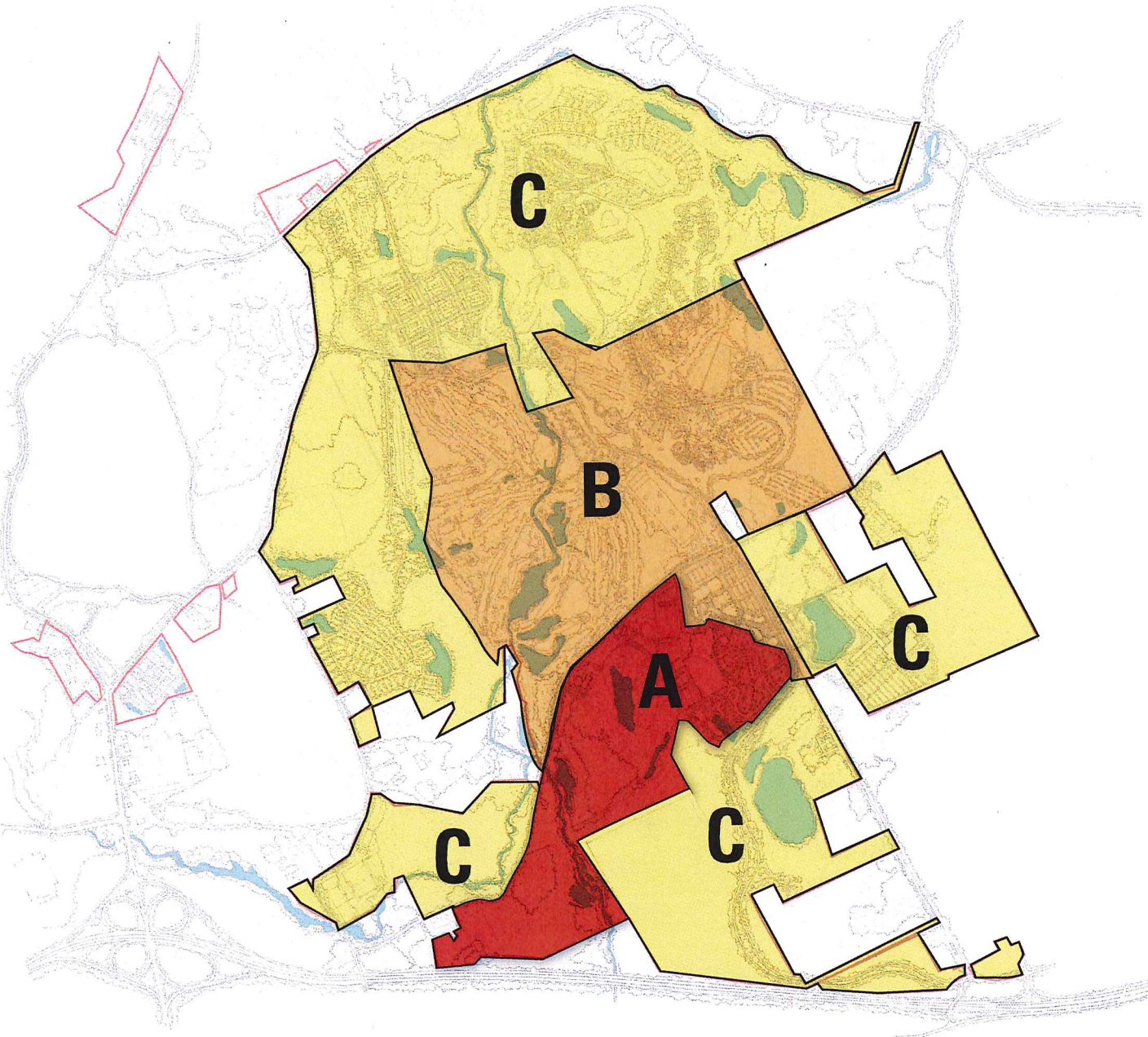


Exhibit 3

PROJECT LABOR AGREEMENT - LETTER OF ASSENT

The undersigned party confirms that it agrees to be a party to and be bound by the Project Labor Agreement (the "PLA" or the "Agreement") as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms. The terms of the Project Labor Agreement, its Schedules, Addenda and Exhibits are hereby incorporated by reference herein.

The undersigned, as a Contractor or Subcontractor (hereinafter Contractor) on the Project known as Infrastructure Site Work for the Adelaar Project and located in Sullivan County (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, 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, together with any and all schedules; amendments and supplements now existing or which are later made thereto:
- (2) Agrees to be bound by the legally established collective bargaining agreements and local trust agreements as set forth in the Project Labor Agreement and this Letter of Assent but only to the extent of the work covered by the PLA.
- (3) Certifies that it has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of said Agreement. The Contractor agrees to employ labor that can work in harmony with all other labor on the Project and shall require labor harmony from every lower tier subcontractor it has engaged or may engage to work on the Project. Labor harmony disputes/issues shall be subject to the Labor Management Committee provisions.
- (4) 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 Letter of Assent identical to this document.
- (5) Understands as per the PLA that they shall not be required to sign local Collective Bargaining Agreements.

Name of Contractor

Authorized Officer & Title

Address

Phone/Fax

Worker's Comp Carrier and Policy #

General Liability Carrier and Policy #

Signature

Date

Sworn to before me this _____ day of _____, 2014

Notary Public