

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH DIVISION

**Associated Builders & Contractors of
Western Pennsylvania; Alex E. Paris
Contracting Company Inc.;
Westmoreland Electric Services LLC;
Lawrence Plumbing LLC; David R.
Smith; Kirtus L. Rumbaugh; Joseph
L. Corn; Andrew Cilia; Keith A.
Impink,**

Plaintiffs,

v.

County of Westmoreland,

Defendant.

Case No. _____

COMPLAINT

The plaintiffs bring suit to enjoin the County of Westmoreland from enforcing its “project labor agreement” with the Pittsburgh Regional Building Trades Council.

The county’s “project labor agreement” prohibits contractors from doing business with the county unless they recognize a union affiliated with the Pittsburgh Regional Building Trades Council as the exclusive representative of their employees—even if the contractor’s employees have chosen not to unionize, and even if the contractor’s employees have chosen a different union to represent them. It also compels employees of a county contractor or subcontractor to become a dues-paying member of that union and maintain their union membership while working on a county construction project. And it compels county contractors and subcontractors to contribute to that union’s pension and health-care funds and operate in accordance with that union’s work rules and employment procedures. The county imposes this “project

labor agreement” on every construction project for the county that exceeds \$150,000 in costs, and it imposes these requirements on every contractor and subcontractor engaged in on-site construction work. *See* Agreement Between the County of Westmoreland and the Pittsburgh Regional Building Trades Council, dated May 26, 2016) (attached as Exhibit 1).

The county’s project labor agreement violates the rights of contractors and their employees under the First and Fourteenth Amendments and the National Labor Relations Act. It also violates state competitive-bidding laws. The plaintiffs seek declaratory and injunctive relief against its continued enforcement.

JURISDICTION AND VENUE

1. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 28 U.S.C. § 1367.

2. Venue is proper because a substantial part of the events giving rise to the claims occurred in this judicial district. *See* 28 U.S.C. § 1391(b)(2).

3. Assignment to the Pittsburgh Division is proper because Westmoreland County is located within that division. *See* Local Civil Rule 3. In addition, the plaintiffs’ claims against Westmoreland County arose in this division. *See id.*

PARTIES

4. Plaintiff Associated Builders & Contractors of Western Pennsylvania (ABC) is a membership organization of contractors who operate in western Pennsylvania. Its offices are located at 2360 Venture Drive, Gibsonia, Pennsylvania 15044.

5. Plaintiff Alex E. Paris Contracting Company Inc. (Alex E. Paris) is a corporation that performs contracting work in western Pennsylvania. Its offices are located at 1595 Smith Township Road, Atlasburg, Pennsylvania 15004. Alex E. Paris is a member of ABC.

6. Plaintiff Westmoreland Electric Services LLC (Westmoreland Electric) is a business that performs contracting work in western Pennsylvania. Its offices are located at 193 Central Road, Tarrs, Pennsylvania 15688. Westmoreland Electric is a member of ABC.

7. Plaintiff Lawrence Plumbing LLC (Lawrence Plumbing) is a business that performs contracting work in western Pennsylvania. Its offices are located at 1133 Industrial Park Road, Vandergrift, Pennsylvania 15690. Lawrence Plumbing is a member of ABC.

8. Plaintiff David R. Smith resides in Westmoreland County, Pennsylvania. He is employed by Westmoreland Electric, which is a member of ABC.

9. Plaintiff Kirtus R. Rumbaugh resides in Westmoreland County, Pennsylvania. He is employed by Westmoreland Electric, which is a member of ABC.

10. Plaintiff Joseph L. Corn resides in Westmoreland County, Pennsylvania. He is employed by Silvis Group Inc., which is a member of ABC.

11. Plaintiff Andrew Cilia resides in Westmoreland County, Pennsylvania. He is employed by Alex E. Paris Contracting Company Inc., which is a member of ABC.

12. Plaintiff Keith A. Impink resides in Westmoreland County, Pennsylvania. He is employed by Westmoreland Electric Services, which is a member of ABC.

13. Defendant County of Westmoreland is a political subdivision of the Commonwealth of Pennsylvania.

FACTS

14. A project labor agreement (PLA) is a government-mandated union collective-bargaining agreement that all contractors must sign to work on a public-works construction project.

15. A project labor agreement forces government contractors to: (a) recognize certain government-approved unions as the exclusive representative of their employees; (b) require that their employees become dues-paying members of these government-approved unions as a condition of their continued employment; (c) contribute to the government-approved union's pension and healthcare funds; (d) operate according to the government-approved union's work rules; and (e) follow the government-approved union's procedures for hiring, firing, and disciplining employees who perform construction work on a county project.

16. Twenty-five (25) states ban the use of PLAs.¹

17. On May 26, 2016, the County of Westmoreland ("the County") entered into a project labor agreement with the Pittsburgh Regional Building Trades Council.

18. This project labor agreement applies to all "qualifying construction projects for the County of Westmoreland costing in excess of \$150,000.00." Agreement Between the County of Westmoreland and the Pittsburgh Regional Building Trades Council, dated May 26, 2016 ¶ 1 (attached as Exhibit 1). The agreement says that it will remain in effect for three years and "shall remain effective on a year to year basis thereafter until or unless it is terminated by either party between 90 and 60 days before its expiration." *Id.*

19. For each of these "qualifying construction projects," the County must "indicate in its bid specifications . . . that a Project Labor Agreement shall be applicable." *Id.* ¶ 2. The County must also make its project labor agreement with the Pittsburgh Regional Building Trades Council available to prospective bidders for inspection. *Id.*

1. The States that ban PLAs are: Alabama, Arkansas, Idaho, Iowa, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, Michigan, Montana, Nevada, New Mexico, North Carolina, North Dakota, Nebraska, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, Virginia, West Virginia, and Wisconsin.

20. Only contractors (and subcontractors) who agree to the terms of the County's project labor agreement with the Pittsburgh Regional Building Trades Council are eligible to perform construction work on a "qualifying construction project." *Id.* ¶ 4. *See also* Agreement Between the County of Westmoreland and the Pittsburgh Regional Building Trades Council, dated May 26, 2016, Exhibit A, article I, § 1 ("[A]ll construction work covered by this Agreement on the Project shall be contracted exclusively to contractors that agree to execute and become bound by this Agreement.") (attached as Exhibit 1).

21. The County's project labor agreement compels these contractors and subcontractors to recognize a union that belongs to the Pittsburgh Regional Building Trades Council as the "sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on the Project." *See id.*, Exhibit A, article VI, § 1.

22. The County's project labor agreement also compels every employee of these contractors and subcontractors to become dues-paying members of a union in the Pittsburgh Regional Building Trades Council if they are performing construction work on a county project. *See id.*, Exhibit A, article VI, § 8. It also requires the contractor or subcontractor to immediately fire any employee that does not join one of these unions as required by the project labor agreement. *See id.* These requirements apply regardless of whether the contractor's employees have voted to join a different union, and regardless of whether those employees have chosen to decline union representation.

23. Finally, the County's project labor agreement requires county contractors and subcontractors to contribute to that union's pension and health-care funds. *See id.*, Exhibit A, article XIII, § 2.

FACTS RELATED TO STANDING

24. Plaintiff Associated Builders & Contractors of Western Pennsylvania (ABC) is a membership organization of contractors who operate in western Pennsylvania. Almost all of ABC's members are non-union. In addition, one of ABC's members, Alex E. Paris Contracting Company Inc., employs workers represented by the United Steelworkers, which is not a member of the Pittsburgh Regional Building Trades Council.

25. The employees of the non-union ABC contractors have exercised their right not to unionize—a right that is protected both by the First Amendment and by the National Labor Relations Act. The employees of Alex E. Paris have exercised their right to elect the United Steelworkers as their collective-bargaining representative, a right that is similarly protected by the National Labor Relations Act.

26. ABC has associational standing to challenge the County's project labor agreement.

27. To establish associational standing, an entity must show that: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977).

28. The non-union members of ABC would have standing to challenge the County's project labor agreement if they sued as individuals, because the County's project labor agreement prohibits the non-union members of ABC from working on the County's construction projects in excess of \$150,000 unless they: (1) recognize a union that belongs to the Pittsburgh Regional Building Trades Council as the exclusive representative of their employees—even though its employees have exercised their constitutional and statutory rights to decline union representation; (2) force

their employees to join that union as a condition of their continued employment; and (3) contribute to that union's pension and health-care funds. This inflicts injury in fact, and this injury will be remedied by an injunction against the continued enforcement of the County's project labor agreement.

29. ABC member Alex E. Paris Contracting Company Inc. would have individual standing to challenge the County's project labor agreement for the same reason.

30. The interests that ABC seeks to protect in the litigation are germane to the organization's purpose. As ABC explains on its website: "Each ABC member firm, regardless of its size or specialty, shares one thing in common: a steadfast commitment to the free enterprise system and the Merit Shop philosophy. This philosophy maintains that the construction process operates best when guided by the principle that the lowest responsible bidder should be awarded the contract." *See* <http://www.abcwpa.org> (last visited on September 23, 2019).

31. Neither the claims asserted by ABC nor the relief requested in this litigation requires the participation of the organizations' individual members.

32. Plaintiff Alex E. Paris Contracting Company Inc. (Alex E. Paris) is a contractor that operates in Western Pennsylvania. Its employees have elected the United Steelworkers as their collective-bargaining representative. Because the United Steelworkers is not a member of the Pittsburgh Regional Building Trades Council, Alex E. Paris and its employees are ineligible to work on any County of Westmoreland construction project in excess of \$150,000. Indeed, federal law prohibits Alex E. Paris from recognizing a union other than the United Steelworkers as the representative of its employees, which makes it impossible for Alex E. Paris to comply with the terms of the County's project labor agreement. This inflicts injury in fact. This injury is caused by the County's enforcement of its project labor agreement with the Pittsburgh Regional Building Trades Council, and it will be redressed by declaratory and injunctive relief that prevents the County from enforcing its PLA.

33. Plaintiff Westmoreland Electric Services LLC (Westmoreland Electric) is a non-union contractor that operates in Western Pennsylvania. Because the employees of Westmoreland Electric have exercised their constitutional right to decline union membership, Westmoreland Electric and its employees are ineligible to work on any County of Westmoreland construction project in excess of \$150,000. This inflicts injury in fact. This injury is caused by the County's enforcement of its project labor agreement with the Pittsburgh Regional Building Trades Council, and it will be redressed by declaratory and injunctive relief that prevents the County from enforcing its PLA.

34. Plaintiff Lawrence Plumbing LLC (Lawrence Plumbing) is a non-union contractor that operates in Western Pennsylvania. Because the employees of Lawrence Plumbing have exercised their constitutional right to decline union membership, Lawrence Plumbing and its employees are ineligible to work on any County of Westmoreland construction project in excess of \$150,000. This inflicts injury in fact. This injury is caused by the County's enforcement of its project labor agreement with the Pittsburgh Regional Building Trades Council, and it will be redressed by declaratory and injunctive relief that prevents the County from enforcing its PLA.

35. Plaintiff David R. Smith is an employee of Westmoreland Electric. Mr. Smith is a lead journeyman electrician and site foreman, and he works on job sites to install switchgear, high-voltage wire, and subpanels. The County's PLA prohibits Mr. Smith from working on county construction projects because he has exercised his constitutional and statutory right to decline union membership. This inflicts injury in fact. This injury is caused by the County's enforcement of its project labor agreement with the Pittsburgh Regional Building Trades Council, and it will be redressed by declaratory and injunctive relief that prevents the County from enforcing its PLA.

36. Plaintiff Kirtus L. Rumbaugh is an employee of Westmoreland Electric. The County's PLA prohibits Mr. Rumbaugh from working on county construction projects because he has exercised his constitutional and statutory right to decline union membership. This inflicts injury in fact. This injury is caused by the County's enforcement of its project labor agreement with the Pittsburgh Regional Building Trades Council, and it will be redressed by declaratory and injunctive relief that prevents the County from enforcing its PLA.

37. Plaintiff Joseph L. Corn is an employee of Silvis Group Inc. The County's PLA prohibits Mr. Corn from working on county construction projects because he has exercised his constitutional and statutory right to decline union membership. This inflicts injury in fact. This injury is caused by the County's enforcement of its project labor agreement with the Pittsburgh Regional Building Trades Council, and it will be redressed by declaratory and injunctive relief that prevents the County from enforcing its PLA.

38. Plaintiff Andrew Cilia is an employee of Alex E. Paris. The County's PLA prohibits Mr. Cilia from working on county construction projects because he has exercised his constitutional and statutory right to join the United Steelworkers, and to have the United Steelworkers serve as his representative rather than a union that belongs to the Pittsburgh Regional Building Trades Council. This inflicts injury in fact. This injury is caused by the County's enforcement of its project labor agreement with the Pittsburgh Regional Building Trades Council, and it will be redressed by declaratory and injunctive relief that prevents the County from enforcing its PLA.

39. Plaintiff Keith A. Impink is a resident and taxpayer of Westmoreland County, and he has standing as a taxpayer to challenge the County's violation of Pennsylvania's competitive-bidding laws. *See Frothingham v. Mellon*, 262 U.S. 447, 486–87 (1923) (“[R]esident taxpayers may sue to enjoin an illegal use of the moneys

of a municipal corporation.”). The County’s enforcement of its project labor agreement with the Pittsburgh Regional Building Trades Council inflicts injury in fact on county taxpayers by awarding projects to someone other than the lowest bidder. This injury is caused by the County’s enforcement of the PLA, and it will be redressed by declaratory and injunctive relief that stops the County from enforcing it.

**CLAIM FOR RELIEF NO. 1:
VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS**

40. Both public and private employees have a constitutional right to decide whether they will join or associate with a union. *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984) (“Freedom of association therefore plainly presupposes a freedom not to associate.” (citing *Abood v. Detroit Board of Education*, 431 U.S. 209, 234–35 (1977)); *Pattern Makers’ League of N. Am., AFL-CIO v. N.L.R.B.*, 473 U.S. 95, 106 (1985) (“Full union membership thus no longer can be a requirement of employment.”)).

41. The Constitution also forbids a public employer to require its employees to join or financially support a union as a condition of employment. *See Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018).

42. A public employer cannot evade the holdings of *Abood* and *Janus* by contracting out its work and then compelling the employees of its contractors to become dues-paying union members as a condition of working on county-related projects.

43. Nor can the County require the employees of contractors to relinquish their First Amendment rights as a condition of working on county-related projects. *See Board of County Commissioners, Wabaunsee County, Kansas v. Umbehr*, 518 U.S. 668, 674 (1996) (“The government ‘may not deny a benefit to a person on a basis that infringes his constitutionally protected . . . freedom of speech’ even if he has no entitlement to that benefit” (quoting *Perry v. Sindermann*, 408 U.S. 593, 597 (1972)).”

44. The County is violating the First and Fourteenth Amendments by requiring county contractors to compel their employees to join a union affiliated with the Pittsburgh Regional Building Trades Council as a condition of their continued employment.

45. The court should declare that the County's project labor agreement violates the First and Fourteenth Amendments, and it should enjoin the County from enforcing it.

46. The plaintiffs assert this claim under the causes of action established in 42 U.S.C. § 1983, *Ex parte Young*, 209 U.S. 123 (1908), and the Declaratory Judgment Act, 28 U.S.C. § 2201.

**CLAIM FOR RELIEF NO. 2:
VIOLATION OF THE NATIONAL LABOR RELATIONS ACT**

47. 29 U.S.C. § 157 gives employees the right to decide whether they want union representation. *See N.L.R.B. v. J. Weingarten, Inc.*, 420 U.S. 251, 256–57 (1975) (“An employee’s right to union representation upon request is based on Section 7 of the Act which guarantees the right of employees to act in concert for ‘mutual aid and protection.’”); *N.L.R.B. v. Granite State Joint Bd., Textile Workers Union of America, Local 1029, AFL-CIO*, 409 U.S. 213, 216 (1972) (“Under § 7 of the Act the employees have ‘the right to refrain from any or all’ concerted activities relating to collective bargaining or mutual aid and protection, as well as the right to join a union and participate in those concerted activities.”).

48. Mr. Cilia and his fellow employees at Alex E. Paris have exercised their right to elect the United Steelworkers as their union representative—a right protected by section 7 of the National Labor Relations Act.

49. Mr. Corn and his fellow employees at Silvis Group have exercised their right to decline to union representation—a right protected by section 7 of the National Labor Relations Act.

50. Mr. Smith and Mr. Rumbaugh and their fellow employees at Westmoreland Electric have exercised their right to decline to union representation—a right protected by section 7 of the National Labor Relations Act.

51. The County’s project labor agreement violates the National Labor Relations Act because it prohibits Mr. Cilia, Mr. Corn, Mr. Smith, Mr. Rumbaugh, and their fellow employees from working on county-related construction because of their refusal to join a union belonging to the Pittsburgh Regional Building Trades Council.

52. The County’s project labor agreement also violates the National Labor Relations Act by forcing county contractors to recognize a union that belongs to the Pittsburgh Regional Building Trades Council—even if their employees have chosen to decline union representation or have chosen a different union to represent them—and by forbidding the non-union members of ABC to work on county construction projects on account of their employees’ decision to decline union representation.

53. The County’s project labor agreement violates the National Labor Relations Act for yet another reason: It compels employees of county contractors to become union members. This violates 29 U.S.C. § 158(a)(3), which abolished the union shop and allows employers to compel only the payment of money to a union as a condition of employment. The County’s project labor agreement compels employees to not only pay money to a county-approved union but to also become *members* of that union, and that violates the employees’ rights under 29 U.S.C. § 158(a)(3). *See Pattern Makers’ League of N. Am., AFL-CIO v. N.L.R.B.*, 473 U.S. 95, 106 (1985) (“Section 8(a)(3) of [the Taft–Hartley] Act effectively eliminated compulsory union membership by outlawing the closed shop. The union security agreements permitted by § 8(a)(3) require employees to pay dues, but an employee cannot be discharged for failing to abide by union rules or policies with which he disagrees. Full union membership thus no longer can be a requirement of employment.”).

54. Finally, the County’s project labor agreement violates 29 U.S.C. § 158(e), which forbids a labor organization and an employer “to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void.” The only exception to this rule is for employers engaged primarily in the building and construction industry, but this exception is inapplicable because the County of Westmoreland is not an employer engaged primarily in the building and construction industry.

55. The court should therefore declare that the County’s project labor agreement violates the Labor Relations Act, and it should enjoin the County from enforcing it.

56. The National Labor Relations Act establishes federal “rights” enforceable under 42 U.S.C. § 1983. *See Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103, 109 (1989).

57. The plaintiffs assert this claim under the causes of action established in 42 U.S.C. § 1983, *Ex parte Young*, 209 U.S. 123 (1908), and the Declaratory Judgment Act, 28 U.S.C. § 2201.

**CLAIM FOR RELIEF NO. 3:
VIOLATION OF STATE COMPETITIVE-BIDDING LAWS**

58. Section 512(a) of the Commonwealth Procurement Code requires all Commonwealth agency contracts to “be awarded by competitive sealed bidding except as otherwise provided in section 511 (relating to methods of source selection).” 62 Pa. C.S. § 512(a).

59. Article III, Section 22 of the Pennsylvania Constitution also mandates competitive bidding and states that the General Assembly “shall maintain by law a system

of competitive bidding under which all purchases of materials, printing, supplies or other personal property used by the government of this Commonwealth shall so far as practicable be made.”

60. These competitive-bidding requirements “guard against favoritism, improvidence, extravagance, fraud and corruption in the awarding of . . . contracts . . . and are enacted for the benefit of property holders and taxpayers, and not for the benefit or enrichment of bidders.” *Yohe v. City of Lower Burrell*, 208 A.2d 847, 850 (Pa. 1965).

61. The intent of competitive-bidding statutes is “to ‘close, as far as possible, every avenue to favoritism and fraud in its varied forms.’” *Premier Comp Solutions, LLC v. Department of General Services*, 949 A.2d 381, 382 n.1 (Pa. Cmwlth. 2008) (quoting *Louchheim v. Philadelphia*, 66 A. 1121, 1122 (Pa. 1907)).

62. Bidders for a public contract must be “on an equal footing” and enjoy the same opportunity for open and fair competition. *See Philadelphia Warehousing and Cold Storage v. Hallowell*, 8490 A.2d 955, 957 (Pa. Cmwlth. 1985).

63. When there is no common standard on which bids are based, “[t]he integrity of the competitive bidding process is violated and the purpose of competitive bidding is frustrated.” *Allan Myers, L.P. v. Dep’t of Transp.*, 202 A.3d 205, 211 (Pa. Cmwlth. 2019) (citation and internal quotation marks omitted).

64. Thus, when the actual “procedures followed emasculate the benefits of [competitive] bidding, judicial intervention is proper.” *Id.* (citing *Conduit and Foundation Corporation v. City of Philadelphia*, 401 A.2d 376, 379 (Pa. Cmwlth. 1979) (“[T]he courts will not condone a situation that reveals a clear potential to become a means of favoritism, regardless of the fact that the . . . officials may have acted in good faith in the particular case.”)).

65. The County is violating state competitive-bidding laws because its project labor agreement discriminates against non-union contractors, as well as contractors

whose employees are represented by a union that does not belong to the Pittsburgh Regional Building Trades Council. This confers an unlawful favoritism upon contractors whose employees have joined a union belonging to the Pittsburgh Regional Building Trades Council.

66. The County's project labor agreement does not prescribe common standards for all bidders, and all contractors bidding on the County's public-works projects are not on an equal footing. The County's project labor agreement violates the integrity of the competitive-bidding process.

67. The court should declare that the County's project labor agreement violates state competitive-bidding laws, and it should enjoin the County from enforcing it.

68. The plaintiffs assert this claim under the supplemental-jurisdiction statute, 28 U.S.C. § 1367, and the Declaratory Judgment Act, 28 U.S.C. § 2201.

DEMAND FOR RELIEF

69. The plaintiffs respectfully request that the court:

- a. declare that the County is violating the plaintiffs' constitutional rights under the First and Fourteenth Amendments by enforcing its project labor agreement;
- b. declare that the County is violating the plaintiffs' federal rights under the National Labor Relations Act by enforcing its project labor agreement;
- c. declare that the County is violating Pennsylvania's competitive-bidding laws by enforcing its project labor agreement;
- d. permanently enjoin the County from enforcing its project labor agreement;
- e. award costs and attorneys' fees under 42 U.S.C. § 1988;

- f. grant other and further relief that the Court may deem just, proper, or equitable.

Respectfully submitted.

/s/ Thomas E. Weiers Jr.

THOMAS E. WEIERS JR.
Pennsylvania Bar No. 43715
Thomas E. Weiers Jr., Esq.
2000 Georgetown Drive, Suite 100
Sewickley, Pennsylvania 15143
(724) 719-6360 (phone)
(724) 935-3233 (fax)
tom.weiersesq@gmail.com

JONATHAN F. MITCHELL *
Pennsylvania Bar No. 91505
Mitchell Law PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
(512) 686-3940 (phone)
(512) 686-3941 (fax)
jonathan@mitchell.law

WALTER S. ZIMOLONG *
Pennsylvania Bar No. 89151
Zimolong LLC
P.O. Box 552
Villanova, PA 19085
(215) 665-0842 (phone)
wally@zimolonglaw.com

* applications for admission pending

Dated: September 23, 2019

Counsel for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Associated Builders & Contractors of Western Pennsylvania; Alex E. Paris Contracting Company Inc.; Westmoreland Electric Services LLC; Lawrence Plumbing LLC; David R. Smith; Kirtus L. Rumbaugh; Joseph L. Corn; Andrew Cilia; Keith A. Impink

(b) County of Residence of First Listed Plaintiff **Allegheny**

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Thomas E. Weiers, Thomas E. Weiers Jr., Esq., 2000 Georgetown Drive, Suite 100, Sewickley, PA 15143 (724) 719-6360; Jonathan F. Mitchell, Mitchell Law PLLC, 111 Congress Avenue, Suite 400, Austin, TX 78701, (512) 686-3940; Walter S. Zimolong, Zimolong LLC, P.O. Box 552, Villanova, PA 19085 (215) 665-0842

DEFENDANTS

County of Westmoreland

County of Residence of First Listed Defendant **Westmoreland**

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 1983; 28 U.S.C. § 2201

Brief description of cause:

First Amendment and NLRA challenges to Westmoreland County's project labor agreement

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/23/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Thomas E. Weiers Jr.

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

JS 44AREVISED June, 2009
IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA
THIS CASE DESIGNATION SHEET MUST BE COMPLETED

PART A

This case belongs on the (☐ Erie ☐ Johnstown ☒ Pittsburgh) calendar.

1. **ERIE CALENDAR** - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venang or Warren, OR any plaintiff or defendant resides in one of said counties.
2. **JOHNSTOWN CALENDAR** - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.
3. Complete if on **ERIE CALENDAR**: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.
4. Complete if on **JOHNSTOWN CALENDAR**: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.

PART B (You are to check ONE of the following)

1. ☐ This case is related to Number _____ . Short Caption _____.
2. ☒ This case is not related to a pending or terminated case.

DEFINITIONS OF RELATED CASES:

CIVIL: Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit
EMINENT DOMAIN: Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

HABEAS CORPUS & CIVIL RIGHTS: All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

PART C

I. CIVIL CATEGORY (Select the applicable category).

1. ☐ Antitrust and Securities Act Cases
2. ☐ Labor-Management Relations
3. ☐ Habeas corpus
4. ☒ Civil Rights
5. ☐ Patent, Copyright, and Trademark
6. ☐ Eminent Domain
7. ☐ All other federal question cases
8. ☐ All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
9. ☐ Insurance indemnity, contract and other diversity cases.
10. ☐ Government Collection Cases (shall include HEW Student Loans (Education), V A Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, SBA Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

/s/ Thomas E. Weiers Jr.

Date: September 23, 2019

ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH FORMS MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.

AGREEMENT

This Agreement is made this 26th day of May, 2016 between the County of Westmoreland and the Pittsburgh Regional Building Trades Council.

WHEREAS, the County of Westmoreland desires to provide for the efficient, safe, quality, and timely completion of construction work in a manner designed to afford the lowest reasonable costs to the County and the public it serves and the advancement of public policy objectives; and

WHEREAS, the County of Westmoreland has determined that entering into Project Labor Agreements for its qualifying construction projects will foster the achievement of these goals, inter alia, by:

1. Avoiding 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;
2. Standardizing the terms and conditions governing the employment of labor on the Project;
3. Permitting wide flexibility in work scheduling and shift hours and times including flexibility designed to meet the special needs of this Project;
4. Including negotiated adjustments to work rules and staffing requirements from those which might otherwise obtain;
5. Providing comprehensive and standardized mechanisms for the settlement of work disputes, including those relating to jurisdiction;
6. Ensuring a reliable source of skilled and experienced labor;
7. Expediting the construction;
8. Furthering public policy objectives to the extent lawful as to improved employment opportunities for minorities, women and the economically disadvantaged in the construction industry; and

WHEREAS, the Parties desire to maximize Project safety conditions for both workers and the public.

NOW, THEREFORE, for good and valuable consideration, and intending to be legally bound, the Parties enter into this Agreement:

1. This Agreement shall become effective upon the date of the final signature of the parties to the Agreement, and shall apply to qualifying construction projects for the County of Westmoreland costing in excess of \$150,000.00 (the "Projects") which are advertised and awarded by the County during the period beginning on the effective date of this Agreement and continuing for a period of three years and shall remain effective on a year to year basis thereafter until or unless it is terminated by either party between 90 and 60 days before its expiration.

2. During the term of this Agreement, the County of Westmoreland shall indicate in its bid specifications for qualifying construction projects that a Project Labor Agreement shall be applicable, and shall make available for inspection by prospective bidders the basic form for the Project Labor Agreement, attached hereto as **Exhibit A**.

3. A Project Labor Agreement in substantially the form attached hereto as **Exhibit A** shall be executed for each qualifying project during the term of this Agreement, and each such Project Labor Agreement shall expire and be of no further force or effect upon the completion of the Project.

4. All construction work on a qualifying Project covered by this Agreement shall be contracted exclusively to Contractors who agree to execute and be bound by the terms of a Project Labor Agreement substantially in the form of **Exhibit A**. For purposes of this Agreement, the term "Contractor" shall be deemed to include all construction contractors and subcontractors engaged in on-site construction work on the Project.

5. In the event that the County receives or expects to receive federal funds for any portion of a construction Project costing in excess of \$150,000.00, a request shall be made to the federal grant funding source for authorization to use the Project Labor Agreement for the award by the County of the construction contracts. If any such federal grant funding source disallows use of the Project Labor Agreement for any reason (including, but not limited to, that it violates a lawful presidential executive order, or that it unduly restricts competition and precludes open and free competition in the award of construction contracts in violation of federal law or regulations), this Agreement shall not apply to such Project.

6. This Agreement is entered into under and pursuant to the laws of the Commonwealth of Pennsylvania, and will in all respects be construed in accordance with the laws of said Commonwealth, without regard to conflict of law provisions.

7. Any court proceedings to enforce rights under this Agreement shall only be commenced in the Court of Common Pleas of Westmoreland County, Pennsylvania (the 10th Judicial District of Pennsylvania).

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties hereto have caused this Agreement to be duly executed, effective as of the day and year first above written.

COUNTY OF WESTMORELAND
BOARD OF COMMISSIONERS

Gina Cerilli May 26, 2016
Gina Cerilli Date

Ted Kopas May 26, 2016
Ted Kopas Date

Charles W. Anderson May 26, 2016
Charles W. Anderson Date

PITTSBURGH REGIONAL
BUILDING TRADES COUNCIL

Richard Stanizzo May 26, 2016
Richard Stanizzo, Business Manager Date

William Brooks May 26, 2016
William Brooks, President Date

William Brooks, President Date

Tom McIntyre May 26, 2016
Tom McIntyre, Secretary Treasurer Date

ATTEST:

Joia Opina
Chief Clerk

WITNESS

WITNESS

WITNESS

Exhibit A

PROJECT LABOR AGREEMENT
FOR THE
WESTMORELAND COUNTY
_____ PROJECT

ARTICLE I

INTENT AND DURATION

Section 1. This Project Labor Agreement (the "Agreement") is entered into between the County of Westmoreland (the "Owner"), the Owner's Project Representative (the "Owner's Representative") and the Pittsburgh Regional Building Trades Council (the "Unions") and applies exclusively to the construction work within the scope of this Agreement to be performed on the County of Westmoreland _____
_____Project (the "Project"). The purpose of this Agreement is to promote efficiency in the construction of the Project by utilizing the best trained and most effective construction workers, to provide for the peaceful settlement of any and all labor disputes and grievances without strikes or lockouts, and to create uniformity in work rules, thereby promoting the public interest in assuring the timely and economical completion of the Project. This Agreement shall apply to the entire duration of the Project but shall be of no further force or effect to the Project upon the completion of the Project.

Upon execution of this Agreement by all parties, all construction work covered by this Agreement on the Project shall be contracted exclusively to contractors that agree to execute and become bound by this Agreement. The Owner, either through its administration or through its project representatives shall monitor compliance with this

Agreement by all contractors and subcontractor through their execution of this Agreement or a letter of Assent hereto. For the purposes of this agreement, the term "contractor" includes all construction contractors and subcontractors of whatever tier engaged in on-site construction work on the Project.

The Owner, the Owner's Representative, and the Unions and all signatory contractors agree to abide by the terms and conditions contained in the Agreement. The Agreement represents the complete understanding of all parties, and no Contractor is or will be required to sign any other agreement with a signatory union as a condition of performing work coming within the scope of this Agreement. No practice, understanding or agreement between a contractor and a union which is not specifically set forth in this Agreement will be binding on any other party unless endorsed in writing by The Owner and/or the Owner's Representative.

Section 2. The Owner, the Owner's Representative, and the Unions agree that this Agreement will be made available to, and will fully apply to, any successful bidder for work on the Project, without regard to whether that successful bidder performs work at other sites on either a union or non-union basis, and without regard to whether employees of such bidder are or are not members of any union. The Unions further agree that this Agreement only applies to this Project, and that by signing this Agreement or a Letter of Assent hereto, a contractor, not previously in a signed agreement with the Unions does not recognize the Unions as the bargaining representative of any of its core employees or employees at any other projects, sites or locations. It is the intent of this Agreement that the Contractors who sign it will create a

relationship with the Unions governed by the provisions of Section 8(f) of the Labor Management Relations Act, 29 U.S.C. Section 158(f).

ARTICLE II

PURPOSE

Section 1. The parties to this Agreement understand and acknowledge the fact that the timely construction of the Project is critical to the efficient and proper operation of the Project. The parties signatory to this Agreement accordingly pledge their complete good faith and trust to work towards an absolutely on-time completion of the Project.

Section 2. The parties to the Agreement understand that time is of the essence for the Project. The parties understand and agree that timely construction of the Project will require a substantial number of employees from construction and supporting crafts possessing skills and qualifications that are essential to its completion. The Unions pledge that they have members who are competent, skilled and qualified to perform the required construction work. It is, therefore, essential that construction work on the Project be done in an efficient, economical manner with optimum productivity and no delays. In recognition of the needs of the Project, Unions signatory hereto and their members agree not to initiate, authorize, sanction, participate in or condone, or permit their members to engage in, any strike, sympathy strike, jurisdictional strike, recognitional strike, slowdown, sabotage, "work to rule", sickout, sit-down, picketing or any type (including information picketing), hand billing, boycott, interruption of work or

any disruptive activity that interferes with or interrupts in any way work on the Project. Contractors agree not to engage in any lockout.

ARTICLE III

BENEFITS OF THE AGREEMENT

Section 1. This Agreement is intended to foster the achievement of a timely and on-budget completion of the Project by, among other things:

- (a) avoiding the costly delays of potential strikes, sympathy strikes, jurisdictional strikes, slowdowns, walkouts, picketing, hand billing, and any other disruptions or interferences with work, and promoting labor harmony and peace for the duration of the Project;
- (b) standardizing terms and conditions governing the employment of labor on the Project;
- (c) permitting wide flexibility in work scheduling and shift hours and times;
- (d) achieving negotiated adjustments as to work rules and staffing requirements from those which otherwise might obtain;
- (e) providing comprehensive and standardized mechanisms for the settlement of work disputes;
- (f) ensuring a reliable source of skilled, apprenticeship trained, and experienced labor; and
- (g) furthering public policy objectives, to the extent lawful, as to improved employment opportunities for minorities, women and the economically disadvantaged in the construction industry.

ARTICLE IV

SCOPE OF THE AGREEMENT

Section 1. This Agreement is specifically defined and limited to onsite construction work bid and contracted for by The Owner and the Owner's Representative for the Project.

Section 2. Items specifically excluded from the scope of this Agreement, even if performed in connection with the Project, include the following:

- (a) work of non-manual employees, including, but not limited to, superintendents, supervisors, staff engineers, inspectors, quality control and quality assurance personnel, timekeepers, mail carriers, clerks, office workers, including messengers, guards, safety personnel, emergency medical and first aid technicians, and other professional, engineering, administrative, supervisory and management employees;
- (b) equipment and machinery owned or controlled and operated by the Owner;
- (c) all off-site (as defined by Davis Bacon Act) manufacture, fabrication or handling of materials, equipment or machinery (except at dedicated lay-down or storage areas), and all deliveries (except for onsite construction trucking) of any time to and from the Project's site;
- (d) all employees of The Owner and the Owner's Representative's design professional or any other consultant including field surveying and field

testing personnel when such employees do not perform manual labor coming within the scope of this Agreement;

- (e) work by employees of a manufacturer or vendor necessary to maintain such manufacturer's or vendor's warranty of guarantee, unless such work has historically and customarily been performed by members of a signatory union, or work performed by supervisors or technicians employed by the manufacturer or vendor to oversee the testing of equipment once installed to insure that the equipment is fully operational;
- (f) laboratory work for specialty testing or inspections not ordinarily done by the signatory Unions;
- (g) all work done by employees of The Owner or of any state or federal agency, authority or entity or employees of any municipality or other public employer;
- (h) all employees and entities engaged in ancillary project work performed by electric utilities, gas utilities and telephone companies.

The Unions agree that there shall be no interference with or disruption of work, of those contractors, employers, and employees exempted from coverage of this Agreement by subparagraph (a) through (h) above.

Section 3.

- (a) The Owner, the Owner's Representative and/or their contractors, as appropriate, have the absolute right to award contracts or subcontracts on the Project notwithstanding the existence or nonexistence of any agreements between such contractor and any Union signatory to this

Agreement provided only that such contractor is willing, ready, and able to execute and comply with this Agreement or a Letter of Assent hereto, should such contractor be awarded work covered by this Agreement.

- (b) All subcontractors of a contractor, of whatever tier, that have been awarded contracts of work covered by this Agreement on or after the effective date of this Agreement shall also be required to accept and to be bound by the terms and conditions of this Agreement, and shall evidence their acceptance by the execution of this Agreement, or a Letter of Assent hereto, prior to commencement of work. A copy of this Agreement or Letter of Assent executed by each contractor shall be available for review by the Union.

Section 4. This Agreement is a stand-alone Agreement. While this Agreement expressly does not incorporate any local area collective bargaining agreements, such local area collective bargaining agreements may be referenced for the limited purposes as hereinafter set forth in this Agreement. If, however, any provision of this Agreement conflicts with any provision of a local area collective bargaining agreement, the provisions of this Agreement control.

Section 5. This Agreement shall recognize the traditional craft jurisdictions of the signatory Unions. Any and all jurisdictional disputes shall be settled in accordance with Article VIII below. While this Agreement is a stand-alone Agreement and expressly does not incorporate any local area collective bargaining agreements, the Agreement will utilize the local area collective bargaining agreements of signatory Unions as a reference to define the signatory Unions' craft jurisdiction.

Section 6. The Owner, Owner's Representative and any general contractor, subcontractor, or any contractor of any tier agree that neither it nor any of its contractors or subcontractors will subcontract any work covered by this Agreement to be done on the Project except to a person, firm or corporation that is or agrees to become party to this Agreement. Any contractor or subcontractor working on the Project shall, as a condition to working on the Project, become signatory to and perform all work pursuant to the terms of this Agreement. Contractors who are signatory to local collective bargaining agreements shall be bound by the terms of their respective local collective bargaining agreements on subcontracting to the extent such terms are consistent with Article IV, Section 2 of this Agreement. Disputes concerning compliance with such local subcontracting provisions for this Project shall be subject to all of the dispute resolution provisions of this Agreement.

Section 7. It is understood that the liability of the contractor and the liability of the separate Unions under this Agreement shall be several and not joint. The Unions agree that this Agreement does not have the effect of creating any joint employer status between or among The Owner and the Owner's Representative and/or any contractor, and **The Owner and the Owner's Representative shall not assume any liabilities of any contractors.**

Section 8. As areas of covered work on the Project are accepted by The Owner and the Owner's Representative, this Agreement shall have no further force or effect on such areas except where the contractor is directed by The Owner and the Construction Manager to engage in correction of work or punch list modifications.

ARTICLE V

LABOR MANAGEMENT COOPERATION

JOINT ADMINISTRATIVE COMMITTEE

Section 1. The parties to this Agreement will establish a Project Joint Administrative Committee ("Committee"). This Committee will be a three person committee comprised of one member designated by the Owner, one member designated by the Owner's Representative, and one member from the signatory Unions, with an alternate signatory Union member available to replace the regular volunteer when a problem or grievance concerns the regular member's Union. Each member of the Committee shall designate an alternate that shall serve in the absence of the member for any purpose contemplated by this Agreement.

Section 2. The committee shall meet monthly, or more often if special circumstances warrant, to discuss the administration of the Agreement, the progress of the Project, labor/management problems that may arise, and any other relevant matters. Any need for interpretation that might arise from the application of the terms and conditions of the Agreement shall be referred directly to the committee for resolution.

ARTICLE VI

UNION RECOGNITION AND EMPLOYMENT

Section 1. Each contractor recognizes the Unions as sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on the Project under the Agreement. It is contemplated that such recognition

under this Agreement is pursuant to the provisions of Section 8(f) of the Labor Management Relations Act, 29 U.S.C. §158(f) unless the signatory Contractor and Unions have another, preexisting legal relationship. (Such recognition by a non-union Contractor is not intended and shall not be construed as consent to the certification of any union as bargaining representative for the core employees of the non-union Contractor.)

Section 2. Each contractor shall have the right to determine the competency of all employees and the number of employees required. Each contractor shall have the sole responsibility for selecting employees to be laid off.

Section 3. For Local Unions having a referral system, each contractor agrees to comply with such system, and the referral system shall be used exclusively in a non-discriminatory manner and in full compliance with federal, state, and local laws and regulation requiring equal employment opportunities and non-discrimination, and referral shall not be affected in any way by the rules, regulations, by-laws, constitutional provisions or any other aspects or obligations of union membership, policies, or requirements. The Unions shall indemnify and hold each contractor and The Owner and the Owner's Representative harmless with respect to any claim arising out of how that Union operates and administers its referral system. All hiring procedures, including related practices affecting apprenticeship and training, will be operated so as to facilitate the ability of the contractors to meet any and all equal employment opportunity/affirmative action obligations. The contractor may reject any referral for any just reason and request another, different referral.

Section 4. In the event that a signatory Local Union does not have a job-referral system as set forth in Section 3 above, the contractor shall give the Union forty-eight (48) hours to refer applicants. The Contractor shall notify, in writing, the Union of employees hired from any source other than referral by the Union.

Section 5. In the event that Local Unions are unable to fill any requisitions for qualified employees within forty-eight (48) hours after such requisition is made by the contractor, the contractor may employ applicants from any other available source. The contractor shall inform the Union of the name and social security number on any applicants hired from other sources.

Section 6. The Local Unions shall not knowingly refer an employee currently employed by any contractor working under this Agreement to any other contractor, nor shall any Union engage in any activity that encourages workforce turnover or absenteeism.

Section 7. The Local Unions will exert their utmost efforts to recruit sufficient numbers of skilled craft workers to fulfill the manpower requirements of each contractor, including calls to local unions in other geographic areas when its referral lists have been exhausted. The parties to this Agreement support the development of increased numbers of skilled construction workers from the residents of Westmoreland County. Toward that end, the Unions agree to encourage the referral and utilization, to the extent permitted by law and the hiring hall procedures, of qualified residents as journeymen, apprentices and trainees on the Project.

Section 8. All employees covered by this agreement who are members of the union for the craft in which they are working on the effective date of this agreement

shall, as a condition of employment on the Project, maintain their membership in the union during the term of this agreement and all employees who are not members of the union for which the craft they are working shall, as a condition of employment on the Project, join the union and maintain their membership in the union during the term of this agreement from and after the eighth day following their employment or the effective date of this agreement, whichever is later. If any of the employees now or hereafter employed by the Contractor are found to be in non-compliance with any of the provisions of this Article, the Union shall immediately notify the employer in writing and the employee so found in non-compliance shall be dismissed from the employ of the contractor on the Project by the end of the shift of the day of notification.

Section 9. Core Employees. To provide opportunities to participate on the Project to minority and women owned business enterprises as well as other enterprises which do not have a relationship with the Unions signatory to this Agreement and to ensure that such enterprises will have an opportunity to employ their "core" employees on this Project, the parties agree that any such enterprise has the right to select core employees whom it will employ on site, in accordance with the formula below and who:

- (a) possess any license required by the county, state, or federal law for the Project work to be performed;
- (b) have worked a total of at least 1,200 hours per year in the construction craft during each of the prior 3 years, including having participated in an apprenticeship program that has been certified by the state;
- (c) were on the contractor's active payroll for at least 60 out of the 180 calendar days prior to the contract award; and
- (d) have the ability to perform safely the basic functions of the applicable trade.

Only the first and third employee, or up to 10 percent of all employees, whichever is greater, hired by each contractor may be core employees. With the exception of the

core employees, all the employees shall be hiring hall referrals by the appropriate signatory unions in accordance with the provisions of the applicable local collective bargaining agreements.

Section 10. The selection of craft foremen and/or general foremen and the number of foremen required shall be the exclusive right and responsibility of each contractor.

Section 11. Unions shall ensure that when they dispatch their members, their members will report to the Project with proper documentation to comply with I-9 Regulations.

ARTICLE VII

GRIEVANCE AND ARBITRATION PROCEDURE

Section 1. Any claim, dispute, question or other matter that the Unions may have against the Owner or the Owner's Representative under this Agreement, is subject to the following procedure for its resolution.

- (a) Any claim, dispute, question or other matter, which the union may have against The Owner and the Owner's Representative under this Agreement will be considered by the Owner's Representative or his designee if the Union files a written claim with the Owner's Representative within six months after the date on which the claim occurred. No claim may be filed later than six (6) months after it occurs.
- (b) If the controversy is not resolved by mutual agreement, the Owner's Representative will issue a decision in writing. The decision will:
 - (a) State the reasons for the action taken; and

- (b) Inform the Union of its right to administrative and judicial review;
 - (c) A copy of the decision will be delivered to the Union by registered mail;
 - (d) The decision issued by the Owner's Representative is final and conclusive unless the Union files a claim with the Owner's Representative within thirty days of its receipt of the decision;
 - (e) If the Owner's Representative does not issue a written decision within 10 days after the claim is filed, the Union may proceed as if an adverse decision had been received. The 10-day period may be extended with the written consent of The Owner and the Owner's Representative and the Union;
 - (f) The Union shall continue to comply with the terms of the Agreement during the claims process, if any, unless otherwise agreed by it and The Owner and the Owner's Representative approves of it in writing.
- (c) If the Union is not satisfied with the decision, the union may proceed to arbitration as stated within Step 2 below.

Section 2. It is specifically agreed that in the event any disputes arise out of the interpretation or application of this Agreement between the unions and contractors, the same shall be settled by means of the procedure set out herein. No such grievance shall be recognized unless called in writing to the attention of the parties to the Agreement (or to the attention of the union by the contractor) within five (5) business days of the alleged violation was committed.

Section 3. All grievance under Section 2 shall be settled according to the following procedures.

Step 1: The dispute shall be set forth in writing and shall be referred to the Business Representative of the Local Union, and the contractor representative involved (or his designated representative), and The Owner and the Owner's Representative.

Step 2: If the dispute is not resolved within ten (10) days, then within ten (10) calendar days, the representatives shall refer the dispute to arbitration. ***The arbitrator shall be Ronald Talarico. In the event that he is unable or unwilling to serve the Owner and the Unions will mutually select and alternate.*** The decision of the Arbitrator shall be binding on all parties. The Arbitrator shall have no authority to change, amend, add to, or detract from any of the provisions of this Agreement. The expense of the impartial Arbitrator shall be borne equally by the union and the contractor.

Section 4. A decision must be given to all parties within five (5) days after the completion of the hearing unless such time is extended by mutual agreement.

Section 5. A written opinion may be requested by either party from the presiding Arbitrator.

Section 6. The time limits specified in any step of the Grievance Procedure may be extended by mutual agreement of the parties initiated by one party to the other, at the appropriate step of the Grievance Procedure. The failure to process a grievance, or failure to respond in writing within the time limits provided above, without an agreed

request for an extension of time, shall be deemed a waiver of such position regarding the grievance without prejudice, or without precedent to the processing of and/or resolution of like or similar grievances or disputes.

Section 7. In order to encourage the resolution of disputes and grievances at Step 1 of this Grievance Procedure, the parties agree that settlements shall not be precedent setting.

Section 8. Nothing in this article of this Agreement shall preclude any signatory contractor, The Owner and/or the Owner's Representative from obtaining administrative or injunctive relief to halt any strike, picketing, or work stoppage pending resolution of a dispute pursuant to this Article.

ARTICLE VIII

JURISDICTIONAL DISPUTES

Section 1. 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 2. All jurisdictional disputes on this Project, between or among Building and Construction Trades Unions and employers, parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department.

Decisions rendered shall be final, binding and conclusive on the Contractors and Unions part to this Agreement.

Section 3. All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Contractor's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

Section 4. Each Contractor will conduct a pre-job conference with the appropriate Building and Construction Trades Council prior to commencing work. The Project Contractor and the Owner will be advised in advance of all such conferences and may participate if they wish.

ARTICLE IX

SUBCONTRACTING

The Project Contractor agrees that neither it nor any of its contractors or subcontractors will subcontract any work to be done on the Project except to a person, firm or corporation who is or agrees to become party to this Agreement. Any contractor or subcontractor working on the Project shall, as a condition to working on said Project, become signatory to and perform all work under the terms of this Agreement.

ARTICLE X

HELMETS TO HARDHATS

Section 1. The Employers 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 Employers and Unions agree to utilize the

services of the Center of Military Recruitment, Assessment and Veterans 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.

Section 2. The Union and Employers 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 XI

MANAGEMENT RIGHTS

Section 1. The Owner, the Owner's Representative, and the contractors retain the full and exclusive authority for the management of their operations and workforces. The Owner, the Owner's Representative, and the contractors, as the case may be, retain the right to plan, direct, and control the work force, including the hiring, promotion, demotion, transfer, layoff, suspension, discipline or discharge for just cause of employees; the determination of crew make-up, crew size and manning levels; the selection of foremen; the assignment and scheduling of work; the promulgation of work rules, customs or practices which limit or restrict productivity, efficiency or the individual and/or joint working efforts of employees shall be permitted or observed. The Owner, the Owner's Representative, and/or and the contractors have the right to choose the methods or techniques of construction and operation.

Section 2. There shall be no limitation or restriction by a signatory Union upon a contractor's choice of material, techniques, methods or technology, or design, nor regardless of source or location, upon the full use and utilization of equipment, machinery, and packaging, pre-cast, pre-fabricated, pre-finish or pre-assembled materials, tools or other labor saving devices. The on-site installation or application of all items shall be performed by the craft having jurisdiction of such work; provided, however, that installation of specialty items may be performed by employees employed under this Agreement who may be directed by other personnel in a supervisory role, in circumstances requiring special knowledge of the particular items.

Section 3. It is recognized by the contractors, the Unions and their members that the performance of certain work on the Project shall consist of the installation of certain material, equipment, or supplies manufactured outside this local vicinity which must, for warranty purposes, be installed by the manufacturer and/or its designated specialty contractors and that such installation work is not customarily performed by the members of such unions. The Unions and their members agree that they shall make no claims for such work; provided, however, that The Owner and the Owner's Representative and/or the Joint Administrative Committee shall provide them with necessary information establishing the nature of such specialty work.

Section 4. The use of new technology, equipment, machinery, tools and/or labor saving devices and methods of performing work may be initiated by any contractor from time to time during the Project. The Union agrees that it will not in any way restrict the implementation of such new devices or work methods.

Section 5. If there is any disagreement between any contractor and the Union concerning the manner of implementation of such device or method of work, the implementation shall proceed as directed by the contractor, and the Union shall have the right to grieve and/or arbitrate the dispute as set forth in Article VII of this Agreement.

ARTICLE XII

WORK STOPPAGES

Section 1. There shall be no strike, sympathy strike, jurisdictional strike, recognitional strike, slowdown, sabotage, "work to rule", sickout, sit-down, picketing or any type (including informational picketing), hand billing, boycott, interruption of work or any disruptive activity that interferes with or interrupts in any way work on the Project. The Unions signatory hereto, and each of their members, agree not to initiate, authorize, sanction, participate in, condone, or permit their members to engage in any such activity. Failure by any Union or employee covered by this Agreement to cross any picket line established by any Union, signatory or non-signatory to this Agreement, or by any other organization or individual at or in proximity to the Project's construction site, is a violation of this Article. The signatory Union's members shall be subject to discipline up to and including discharge for violation of the provisions of this Article.

Section 2. The Union shall not sanction, aid or abet, encourage or condone any conduct or activity in violation of this Article, and shall undertake all means to prevent or to terminate any such conduct immediately. No employee shall engage in activities that violate this Article, and the Union shall pursue all disciplinary action permitted by its

Constitution and by-Laws against any employee who engages in any activity that violates this Article.

Section 3. If any contractor or the Owner contends that any Union or its member(s) has violated this Article, it will notify in writing the Pittsburgh Regional Building Trades Council, advising it of the fact, which copies of such notice to the Local Union(s) involved. The President of the Pittsburgh Regional Building Trades Council will immediately instruct, order and use the best efforts of his office, to cause the Local Union(s) or its members to cease any violation of this Article.

Section 4. Should The Owner and the Owner's Representative believe that there has been any violation of this Article, it may institute any action at law or in equity or any other contractual procedure available to it. Any action commenced by The Owner and the Owner's Representative is separate from any action brought by any contractor.

ARTICLE XIII

WAGES AND BENEFITS

Section 1. All employees covered by this Agreement shall be classified in accordance with work performed and paid the prevailing union wage and benefit rates for these classifications. The Owner and the Owner's Representative, upon request, shall provide the Unions with substantiation that prevailing wages and benefits are being paid by contractors on the Project.

Section 2. Each contractor will also pay all required contributions in the amounts required by Section 1 of this Article to the established employee benefit funds that accrue to the direct benefit of the employees (such as pension and annuity, health and

welfare, vacation, apprenticeship, training funds). With respect to contributions required in this Section to Employee-Union jointly trusted funds, the contractor adopts and agrees to be bound by the written terms of the legally established trust agreement specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds. The contractor authorizes the parties to such Trust Funds to appoint Trustees and successor Trustees to administer the Trust Funds and hereby ratifies and accepts the Trustees so appointed as if made by Contractor. This section does not apply to core employees unless any core employee voluntarily elects to join and become a member of any local union signatory to this Agreement, in which event this Section shall immediately apply with respect to any such core employee.

ARTICLE XIV

LOCAL UNION NEGOTIATIONS DURING THE PENDENCY OF THE AGREEMENT

Section 1. All parties to this Agreement understand and acknowledge that some crafts that will be working on the Project are covered by local collective bargaining agreements that will expire prior to the projected completion of the Project. All contracting parties understand and agree that irrespective of whether such local collective bargaining agreement negotiations are successful or unsuccessful, there shall be no strike, sympathy strike, jurisdictional strike, recognitional strike, slowdown, sabotage, "work to rule," sickout, sit-down, picketing of any type (including informational picketing), hand billing, boycott, interruption of work or any disruptive activity that interferes with or interrupts in any way work on the Project by any Union involved in such local negotiations, or by any of its members, nor shall there be any lockout on the

Project affecting such union or its members during the course of such negotiations, Irrespective of the status of any such local collective bargaining agreement negotiations, the affected Union and all of its members will observe and fully comply with the provisions of this Agreement.

Section 2. Should a craft covered by this Agreement negotiate an increase in wages or an increase in benefits with any contractor to become effective during the term of the Project for the area of the Project, those wage and/or benefit increases shall be paid, as of the effective date of those increases, to those employees in that craft performing work covered by this Agreement. Nothing in this paragraph will affect the construction agreements between the Owner and the contractors

ARTICLE XV

HOURS OF WORK, OVERTIME SHIFTS AND HOLIDAYS

Section 1. Except as provided in Section 4, the first shift shall consist of eight (8) or ten (10) hours per day between the hours of 6:00 a.m. and 5:30 p.m., plus one-half (½) hour unpaid for lunch, approximately mid-way through the shift. Forty (40) hours per week shall constitute a regular week's work, whether consisting of five (5) eight (8) hour days, or four(4) ten (10) hour days. The work week will start on Monday and conclude on Sunday. A uniform starting time will be established for all crafts on each segment of the work. Northing herein shall be construed as guaranteeing any employee eight (8) to ten (10) hours per day or forty (40) hours per week. The Union(s) shall be informed of the work starting time set by the contractor at the pre-job conference that may be changed thereafter upon three (3) days' notice to the Union(s) and the employees. A second shift, if used, shall consist of eight hours between 3:00

p.m., and 1:00 a.m.; a third shift, if used, shall begin between 10:00 p.m., and 1:00 a.m. For the purposes of Section 3, the third shift shall be considered as part of the prior day's work.

Section 2. Employees shall be at their place of work at the starting time and shall remain at their place of work (as designated by the contractor) performing their assigned functions until quitting time, which is defined as the scheduled end of the shift. The parties reaffirm their policy of a fair day's work for a fair day's wage. There shall be no pay for time not worked unless the employee is otherwise engaged at the direction of the contractor.

Section 3. Overtime shall be defined as all hours worked in excess of forty (40) hours in a work week; such work and work performed on Saturdays shall be paid at one and one half times the straight time rate of pay. However, in scheduled five day/eight hour shift work weeks, Saturday may be scheduled as a "make-up" day at straight time to make up for a day lost (Monday through Friday) due to inclement weather; in scheduled four (4) day/ten (10) hour shift work weeks, Friday and/or Saturday may be scheduled as a "make-up" day at straight time to make up for a day lost (Monday through Thursday) due to inclement weather. In addition, if a make-up day is scheduled, all employees directed to work on such day will be guaranteed a minimum of four (4) hours work or pay. In any week in which employees on the Project are scheduled on four (4) day/ten (10) hours shifts, an employee whose first day of work on the Project begins on Wednesday, or a later day of the schedule, shall be paid, during the first week of his employment only, time and one-half ($\frac{1}{2}$) for all hours worked in excess of eight (8) in a day for each day he works during the said week. Work on

Sundays and holidays shall be at double time. There will be no restriction on a contractor's scheduling of overtime or non-discriminatory designation of employees who will work. The contractor may schedule work so as to minimize overtime. There shall be no pyramiding of overtime pay under any circumstances.

Section 4. Shift work may be performed as follows:

- (a) Shift work may be performed as the option of the contractor(s) upon three(3) days' prior notice to the Union and shall continue for a period of not less than five (5) working days. Saturdays and Sunday, if worked, may be used for establishing the five (5) day minimum work shift. If two (2) shifts are worked, each shall consist of eight (8) hours of continuous work exclusive of a one half ($\frac{1}{2}$) hour non-paid lunch period. Any third shift shall consist of seven (7) hours of continuous work exclusive of one-half ($\frac{1}{2}$) hour non-paid lunch period for eight (8) hours' pay.
- (b) The contractor may establish a work week of four (4) consecutive ten (10) hour work days (exclusive of one half ($\frac{1}{2}$) hour unpaid lunch, approximately midway through the shift) between Monday and Friday.

Section 5. Recognized holidays on the Project shall be New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day and Christmas Day. Work performed on holidays shall be paid at double the straight time rate of pay. A holiday falling on Sunday shall be observed the following Monday. A holiday falling on Saturday shall be observed on the preceding Friday.

Section 6. The contractor will schedule a meal period of not more than one-half ($\frac{1}{2}$) hour duration at the work location at approximately the mid-point of the scheduled

work shift four (4) hours in a five-day work week, five (5) hours in a four (4)-day work week, consistent with Section 1; provided, however, that the contractor may, for efficiency of the operation, establish a schedule which coordinated the meal periods of two (2) or more crafts. If an employee is required to work through his meal period, he shall be compensated for the time worked at the applicable overtime rate and the employee shall, when work permits, eat his lunch "on the fly".

Section 7. There will be no organized breaks or other non-working time established during working hours. Individual nonalcoholic beverage containers will be permitted at the employee's workstation with the exception of employees performing finish work.

ARTICLE XVI

APPRENTICES

Section 1. The parties recognize the need to maintain continuing support of programs designed to develop adequate members of competent workers in the construction industry. The contractor(s) will accordingly employ apprentices in their respective crafts to perform work on the Project within the apprentices' capabilities.

Section 2. The Union agrees to cooperate with the contractor in furnishing qualified apprentices as requested. There shall be no restrictions on the utilization of apprentices in performing the work on their craft provided they are properly supervised.

ARTICLE XVII

DRUG, ALCOHOL AND FIREARMS POLICY

All parties understand and agree that a drug and alcohol policy, attached as Appendix 1 hereto, will be in force for all work performed under the Agreement. The drug and alcohol policy will prohibit the use, sale, transfer, purchase and/or possession of a controlled substance or alcohol while on the Project's premises and will require testing of employees. The drug and alcohol policy will be incorporated into and made part of this Agreement and implemented for all contractors and employees working on the Project. The firearms policy prohibits firearms on the Project's premises. The contractors and the unions will comply with all other laws and regulations pertaining to work performed on the premises of schools within the Commonwealth of Pennsylvania.

ARTICLE XVIII

NON-DISCRIMINATION

It is the continuing policy of The Owner and the Owner's Representative, the contractors, and the Unions that the provisions of this agreement shall be applied without discrimination because of age, race, sex, color, religion, creed, disability status, or national origin. There shall be no discrimination against any employee because of his or her membership in, or activities on behalf of Unions.

ARTICLE XIX

SOLE AND COMPLETE AGREEMENT

The parties agree that this Agreement constitutes the sole and complete agreement between them governing the rates of pay and working conditions of the construction employees working on the Project, that it settles all demands and issues on

the matters subjected to collective bargaining, and that it shall not be modified or supplemented in any way except by written agreement by both parties.

ARTICLE XX

SEPARABILITY AND SAVINGS CLAUSE

Section 1. If any article or section of this Agreement shall be held invalid by law or by a tribunal of competent jurisdiction, or if compliance with or enforcement of any article should be restrained pending a final determination as to its validity, the remainder of this Agreement shall not be affected and shall remain in full force and effect.

Section 2. Force of Agreement. The parties recognize the right of COUNTY to withdraw, at its absolute discretion, the utilization of this Agreement as part of any bid specification should a court of competent jurisdiction issue any order which could result, temporarily or permanently, in delay of the bidding, awarding, and/or construction work on the Project. Notwithstanding such an action, or such court order, the parties agree that the Agreement shall remain in full force and effect on the Project, to the maximum extent legally possible.

Section 3. Federal Funding of the Project. In the event that the COUNTY receives or expects to receive federal funds for any portion of this construction Project, a request shall be made to the federal grant funding source for authorization to use the Project Labor Agreement prior to the award by the COUNTY of the construction contracts. If any such federal grant funding source disallows use of the Project Labor Agreement for any reason (including, but not limited to, that it violates a lawful presidential executive order, or that it unduly restricts competition and precludes open

and free competition in the award of construction contracts in violation of federal law or regulations), this Agreement shall not apply to such Project, and shall be null and void.

ARTICLE XXI

EMPLOYEE DRUG TESTING POLICY

All parties recognize that this is a public project, and this provision is of great importance to the Owner. Further, the Owner and the Owner's Representative is committed to providing a safe workplace for the workers assigned to the Project, promoting high standards of employee health, and fostering productivity that satisfies its quality expectations. Consistent with the intent and spirit of this commitment, The Owner and the Owner's Representative has established a substance abuse testing specification for the Project with the goal of maintaining a work environment that is free from the effects of the use of illegal drugs and alcohol. The Owner and the Owner's Representative will implement the terms of this policy.

This specification is not intended as a substitute for the Contractors' complete written substance abuse policy. Normally, such policies include other important features, including, but not limited to, an employee education and awareness program, a supervisor training program and an employee assistance program.

This policy requires that anyone entering the project site will comply with the substance abuse testing requirements as outlined in this section. The Owner and the Owner's Representative reserves the right to amend this specification upon written notice to the Pittsburgh Regional Building Trades Council.

CONTRACTUAL REQUIREMENTS

All **Contractors** must have and enforce a written Substance Abuse Program incorporating the testing requirements, terms, and conditions set forth in this specification. This specification is applicable to all employees, current and prospective, in order to be eligible to perform work at the Project site. The **Contractors** must comply with the specification. Suppliers, vendors, and visitors are subject to confirmation of their abstinence from the possession or use of substances indicated in this specification. A copy of each Contractor's substance abuse program must be submitted to The Owner and the Owner's Representative for approval prior to commencement of work on the Project site.

The substance abuse program must apply to all of the employees of the contractor and/or subcontractors of any tier working on the Project site. This includes workers, new hires, replacement workers, and supervisory personnel. No employee or prospective employee of a Contractor shall be permitted to work on the Project site unless such employee has submitted to testing as required by this specification and unless the results of such testing are negative as hereinafter defined. The **Contractor** must provide the Owner with a Monthly Summary Report of the Substance Abuse Program compliance.

All Contractors must train their respective employees in methods that will allow them to recognize substance abusers.

The costs of implementing the Substance Abuse Program shall be borne by each respective **Contractor** affected by this specification.

Suppliers, vendors, and visitors must ***become signatory*** to the terms of this specification and their abstinence from substance abuse, and their continued avoidance of violations of this specification at the Project site. Furthermore, in the event of an incident and/or accident occurrences involving suppliers, vendors, and/or visitors, the same agrees to submit to substance abuse testing, at the Owner's and/or the Owner's Representative's request. Refusal to submit to the substance abuse testing when requested would be grounds for the Owner and/or the Owner's Representative to have the supplier, vendor, or visitor permanently barred from the Project site.

TESTING REQUIREMENTS

The Owner and the Construction Manager require:

- Pre-engagement drug and alcohol testing.
- Drug testing for reasonable suspicion of illegal drug use.
- Post accident and post incident drug and alcohol testing.
- Drug testing following discovery of illegal or unauthorized drugs or paraphernalia.

SUBSTANCES

Threshold Limits 5 PANEL TEST PLUS ALCOHOL

Initial Limit

GC/MS Confirmation Limit

Alcohol	0.04%	0.04%
Amphetamines	1,000 ng/ml	500 ng/ml
Cocaine Metabolites	300 ng/ml	150 ng/m
Marijuana Metabolites	50 ng/ml	15 NG/ml
Opiate Metabolites	2,000 NG/ml	2,000 NG/ml
Phencyclidine	25 NG/ml	25 NG/ml

DEFINITIONS

Positive Tests - Test results that indicate the presence of legal or illegal substances at or above the threshold limit as set forth in this specification.

Negative Tests - Test results indicating that legal or illegal substance are at levels below the threshold limits as set forth in this specification.

Pre-engagement Testing - Testing for all substances other than alcohol as set forth in this specification conducted by **contractor** or its subcontractors at any tier for their employees or prospective employees within one hundred and twenty (120) days prior to their appearance on the Project site.

For Cause Testing - Testing for all substances set forth in this specification conducted by the respective **Contractor** for their employees whose behavior on the Project site causes either the **Contractor** personnel or the respective **Contractor** supervisory personnel to reasonably conclude that such behavior may result from substance abuse.

The Project - The project is defined as the total construction of which the work performed under the Contract Documents may be the whole or a part and which may include construction by the **Construction Manager**.

Post-Accident/Incident Testing - Testing for all substances set forth in this specification conducted by the respective **Contractors** for their employees involved in an injury producing accident or a "near miss" in which injury is avoided or in events resulting in damage to property as determined by the Construction Manager personnel or the respective Contractor supervisory personnel.

TESTING REQUIREMENTS

All Contractors must perform pre-engagement, for cause, and post accident/incident testing as follows:

- (a) All drug testing must be conducted by a National Institute of Drug Abuse (NADA) certified laboratory with test results interpreted by a licensed medical review officer (M.O.).
- (b) The initial screen tests for alcohol shall be performed by using either a saliva test or a Breathalyzer test comparable to the type used by state or local law enforcement officials. Furthermore, alcohol confirmatory tests shall be performed by using either a blood alcohol test or a Breathalyzer test comparable to the type used by state or local law enforcement officials.
- (c) Evidence of the negative test results of individual employees required by this specification shall be furnished to the Construction Manager prior to the commencement of work by the individual employee and promptly after performance of any subsequent testing required by this specification. Acceptable negative test result format:

- (d)
 - A certificate signed by the testing laboratory, setting forth the nature and results of tests performed; or
- (e)
 - An identification card signed by the respective Contractor and issued to the individual employee, setting forth the employee's name, and the date, nature and results of testing as reported on a certificate issued by the testing laboratory. The name of the testing laboratory shall also appear on the identification card; provided the affected employee authorizes the issuance of such identification card.

COMPLIANCE PROCEDURE

The Owner and the Owner's Representative reserve the right to audit any substance abuse program required by this specification to verify compliance results within twenty-four (24) hours of notification of intent to audit. The Owner and the Owner's Representative shall have free right to access to all relevant records of their subcontractors and suppliers for this purpose, provided such record disclosures are within the scope of the Commonwealth of Pennsylvania's Department of Health and Human Services guidelines pertaining to confidentiality of employee records.

The Contractor's pre-engagement employees who receive a positive test result shall immediately leave the Project's site. Transportation of employees receiving a positive test result is the direct responsibility of the employing Contractors. Furthermore, pre-engagement employees receiving a positive test result shall not be permitted to return

to the Project's site earlier than ninety (90) days from the date of the positive test. At that time the employee may begin the process outlined by this specification again.

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties hereto have caused this Agreement to be duly executed on the dates indicated on the signature lines below.

COUNTY OF WESTMORELAND
BOARD OF COMMISSIONERS

ATTEST:


Gina Gerilli Date

Chief Clerk


Ted Kopas Date

Charles W. Anderson Date

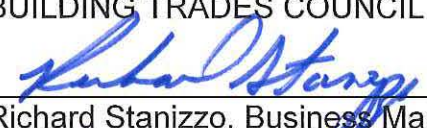
WITNESS:

OWNER'S REPRESENTATIVE

Date

PITTSBURGH REGIONAL
BUILDING TRADES COUNCIL

WITNESS


Richard Stanizzo, Business Manager Date

WITNESS


William Brooks, President Date

WITNESS


Tom McIntyre, Secretary-Treasurer Date

WITNESS:

CONTRACTOR

Date

ATTACHMENT A

LETTER OF ASSENT

This is to certify that the undersigned Contractor (Employer) has examined a copy of the Project Labor Agreement between the County of Westmoreland and the Pittsburgh Regional Building Trades Council with the effective date of _____, 2016, which Agreement will remain in effect until completion of construction of _____.

The undersigned hereby agrees to be bound by and to comply with all of the terms and conditions of the aforementioned Project Labor Agreement.

It is understood that the signing of this Letter of Assent shall be as binding on the undersigned Contractor (Employer) as though the undersigned had signed the aforementioned Project Labor Agreement.

This Letter of Assent shall become effective and binding on the undersigned Contractor (Employer) and the Pittsburgh Regional Building Trades Council and Signatory Unions as of the _____ day of _____, 20____, and shall remain in effect as set forth above.

Print Name of Contractor (Employer)

Authorized Signature

Street Address

Print Name and Title

City State Zip Code

Telephone

Fax

E-Mail Address