

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

ESSAR STEEL MINNESOTA LLC and
ESML HOLDINGS INC.,¹

Debtors.

Chapter 11

Case No. 16-11626 (BLS)

(Jointly Administered)

Objection Deadline: March 9, 2017 at 4:00 PM EST

Hearing Date: March 16, 2017 at 10:00 AM EST

**DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105(a) AND
363(b) FOR ORDER AUTHORIZING DEBTORS TO ENTER INTO CERTAIN
AGREEMENTS WITH (A) THE UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND
SERVICE WORKERS INTERNATIONAL UNION, AND (B) THE IRON RANGE
BUILDING AND CONSTRUCTION TRADES COUNCIL**

Mesabi Metallica Company LLC f/k/a Essar Steel Minnesota LLC (“**Mesabi**”) and ESML Holdings Inc. (“**Holdings**,” and, together with Mesabi, the “**Debtors**”), as debtors and debtors in possession in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby file this motion (the “**Motion**”) for entry of an order, pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the “**Bankruptcy Code**”), authorizing, but not directing, Mesabi to enter into a certain neutrality and card check agreement with the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (“**United Steelworkers**”) and a certain labor stabilization agreement with the Iron Range Building and Construction Trades Council (“**Building & Construction Trades Council**,” together with United Steelworkers, the “**Unions**”). In support of the Motion, the Debtors respectfully represent:

¹ Essar Steel Minnesota LLC has changed its name to Mesabi Metallica Company LLC. The last four digits of its federal taxpayer identification number are 8770. The last four digits of ESML Holdings Inc.’s federal taxpayer identification number are 8071.

I. PRELIMINARY STATEMENT

The Debtors reached another significant milestone in their efforts to forge a successful future for their Mesabi Range project. Members of the Iron Range legislative delegation (the “**Iron Range Delegation**”), two separate Unions, and the Debtors have been in discussions to facilitate favorable working environments between the employers and the workers employed on the Project (as defined below). Specifically, the Debtors and the United Steelworkers, one of the largest industrial labor unions in North America, have been discussing and negotiating an agreement regarding the potential unionization of Mesabi’s non-represented production and maintenance employees through a “**Neutrality Agreement**.” Additionally, the Debtors have worked with the Building & Construction Trades Council to establish a proper standard to resolve potential labor issues and promote efficient construction operations for the economical completion of the Project through a “**Project Site Labor Stabilization Agreement**” (collectively with the Neutrality Agreement, the “**Union Agreements**”). After discussing and negotiating these matters with the Iron Range Delegation and the Unions, Mesabi has concluded, in its reasonable business judgment, that entry into the Union Agreements is sound and beneficial to the Debtors and their estates and should be approved.²

The proposed Union Agreements are important steps being taken by the Debtors to work in a proactive and cooperative way with the area Unions to eliminate or minimize the risks of future labor disputes, labor shortages or other labor-related disruptions adversely impacting future construction activities on the Project, operational readiness or general operations. Mesabi believes that the Union Agreements, which come at no cost to the Debtors or their estates, can promote efficiency in its future operations. The Union Agreements also allow the Debtors and

² Although the Debtors believe that entry into the Union Agreements are within their ordinary course of business, the Debtors are, out of an abundance of caution, seeking an order pursuant to section 363(b) of the Bankruptcy Code authorizing Mesabi to enter into the Union Agreements and perform thereunder.

their employees to build positive relations with the Unions and the Iron Range Delegation who play significant roles in the Minnesota Iron Range iron-ore mining industry. Importantly, Mesabi believes that the Union Agreements will provide for further productive communications with the Unions and the Iron Range Delegation in the future and help fuel the successful completion and operation of the Project.

For all of the foregoing reasons, the Debtors request that the Court grant the Motion.

II. BACKGROUND

A. General Background

1. On July 8, 2016 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 the Bankruptcy Code, thereby commencing these Chapter 11 Cases. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. The Court has entered an order for the joint administration of the Chapter 11 Cases [D.I. 32].

3. No trustee or examiner has been appointed in the Chapter 11 Cases. On July 19, 2016, an official committee of unsecured creditors (the “**Committee**”) was appointed in the Chapter 11 Cases.

4. Information regarding the Debtors’ businesses, capital structure, and the circumstances leading to the commencement of the Chapter 11 Cases is set forth in the Declaration of Sanjay Bhartia in Support of First Day Motions and Applications (the “**First Day Declaration**”) [D.I. 14].

5. As further detailed in the First Day Declaration, Mesabi was formed to develop and operate a fully-integrated, seven (7) million tonnes per annum iron ore mine and pellet production facility in the western Mesabi Iron Range in northern Minnesota (the “**Project**”).

6. Prior to these Union Agreements, there was a previous Project Site Labor Stabilization Agreement governing work on the Project by construction contractors and trade union workers during prior periods of construction activity on the Project. In order to continue to promote harmonious labor relations with local trade union workers who will be needed to complete construction of the Project and to avoid potential labor disputes, Mesabi would like to enter into the Project Site Labor Stabilization Agreement for future construction work on the Project. As to the proposed Neutrality Agreement, Mesabi has not previously entered into any neutrality agreements with the United Steelworkers or any other union.

7. After recent discussions with the Unions and the Iron Range Delegation, Mesabi has agreed, upon approval by this Court, to enter into the Union Agreements at no cost to the Debtors.

III. JURISDICTION AND VENUE

8. The court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* entered by the United States District Court for the District of Delaware on February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

IV. RELIEF REQUESTED

9. By this Motion, the Debtors respectfully request that the Court enter an order (the “**Proposed Order**”), substantially in the form attached hereto as **Exhibit A**, authorizing, but not

directing the Debtors to enter into the Union Agreements, substantially in the form of those attached to the Motion as **Exhibit 1** and **Exhibit 2**.

V. BASIS FOR RELIEF

10. The Debtors seek authority to enter into the Union Agreements pursuant to sections 105(a) and 363(b) of the Bankruptcy Code.

11. Section 105(a) authorizes this Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). A debtor must seek court approval to engage in non-ordinary course transactions with respect to property such as the Union Agreements. *Id.* at § 363(b). Pursuant to section 363(b), a debtor’s proposed use, sale or lease of estate property outside of the ordinary course of business is appropriate where there exists a sound business justification for the proposed transaction. *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (noting that under normal circumstances, courts defer to a trustee’s judgment concerning use of property under § 363(b) when there is a legitimate business justification); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (the debtor must “show a sound business purpose” justifying the proposed use of property); *In re Phx. Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (requiring a “good business reason” for sale of property under section 363(b) of the Bankruptcy Code); *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983) (acknowledging the use of the “articulated business justification” for the use of property under § 363).

12. A debtor has the burden of establishing that a valid business purpose exists for any proposed non-ordinary course use of estate property. *See Montgomery Ward*, 242 B.R. at 153; *Lionel Corp.*, 722 F.2d at 1071. Once a debtor articulates a valid business justification, the

proposed transaction is presumed to have been made in good faith and on a fully informed basis.

In re Integrated Resources, Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). The business judgment rule therefore shields a debtor's management from judicial second-guessing. A court should approve a debtor's business decision unless that decision is a product of bad faith or gross abuse of discretion. *See id.*; *see also Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1985).

13. The valid business purposes with respect to the Union Agreements are clear:

(a) promote harmonious labor relations with the Unions and proactively eliminate or minimize the risks of future labor disputes, labor shortages, or other labor disruptions involving local trade union workers who will be needed to complete construction of the Project; and (b) establish an orderly procedure by which Mesabi's future employees may obtain unified representation regarding their employee needs and benefits. The Union Agreements also provide the Debtors and the Unions, and by extension, the Iron Range Delegation, opportunities to maintain constructive communications and to cooperatively work together in establishing positive business and labor relations in the future. Moreover, the Union Agreements, proposed in good faith and negotiated by the Debtors and the Unions in arm's-length transactions, do not impose any burdens, monetary, administrative, or otherwise, on the Debtors. Consequently, entry into the Union Agreements is in the best interests of the Debtors and the Debtors' estates.

14. For all of these reasons, entry into and performance under the Union Agreements are appropriate exercises of the Debtors' business judgment and should be approved by the Court.

VI. NOTICE

15. Notice of this Motion has been provided to (i) the Office of the United States Trustee for the District of Delaware, (ii) counsel to the Committee, (iii) known counterparties to the Union Agreements, and (iv) those parties that have filed requests for notices in this case pursuant to Bankruptcy Rule 2002. The Debtors submit that in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

16. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

VII. CONCLUSION

WHEREFORE the Debtors respectfully request entry of an order granting the relief requested herein and such other and further relief that is just and proper.

Dated: February 23, 2017

Respectfully submitted,

/s/ Jeffrey M. Schlerf

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

ESSAR STEEL MINNESOTA LLC and
ESML HOLDINGS INC.,¹

Debtors.

Chapter 11

Case No. 16-11626 (BLS)

(Jointly Administered)

Hearing Date: March 16, 2017 at 10:00 A.M.

Objections Due: March 9, 2017 at 4:00 P.M.

**NOTICE OF HEARING ON DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§
105(a) AND 363(b) FOR ORDER AUTHORIZING DEBTORS TO ENTER INTO
CERTAIN AGREEMENTS WITH (A) THE UNITED STEEL, PAPER AND
FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL
AND SERVICE WORKERS INTERNATIONAL UNION, AND (B) THE IRON
RANGE BUILDING AND CONSTRUCTION TRADES COUNCIL**

TO: (i) The Office of the United States Trustee for the District of Delaware, (ii) counsel to the Official Committee of Unsecured Creditors, (iii) known counterparties to the Union Agreements, and (iv) all parties requesting notices pursuant to Bankruptcy Rule 2002.

PLEASE TAKE NOTICE that Mesabi Metallics Company LLC (f/k/a Essar Steel Minnesota LLC) and ESML Holdings Inc. have filed the attached **Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Order Authorizing Debtors to Enter Into Certain Agreements with (A) the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, and (B) The Iron Range Building and Construction Trades Council** (the "Motion").

PLEASE TAKE FURTHER NOTICE that responses or objections to the Motion, if any, are to be filed on or before **March 9, 2017 at 4:00 p.m. (Prevailing Eastern Time)**. At the same time, you must serve a copy of the objection or response on the undersigned attorneys.

PLEASE TAKE FURTHER NOTICE that if any responses are timely filed in accordance with this Notice, a hearing on the Motion will be held on **March 16, 2017 at 10:00 a.m. (Prevailing Eastern Time)** before The Honorable Brendan L. Shannon at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Courtroom 1, Wilmington, Delaware 19801.

¹ Essar Steel Minnesota LLC has changed its name to Mesabi Metallics Company LLC. The last four digits of its federal taxpayer identification number are 8770. The last four digits of ESML Holdings Inc.'s federal taxpayer identification number are 8071.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED BY THE APPLICATION WITHOUT FURTHER NOTICE OR HEARING.

Dated: February 23, 2017

Respectfully submitted,

FOX ROTHSCHILD LLP

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EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

ESSAR STEEL MINNESOTA LLC and
ESML HOLDINGS INC.,¹

Debtors.

Chapter 11

Case No. 16-11626 (BLS)

(Jointly Administered)

Re: Docket No. _____

**ORDER GRANTING DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105(a)
AND 363(b) FOR ORDER AUTHORIZING DEBTORS TO ENTER INTO
CERTAIN AGREEMENTS WITH (A) THE UNITED STEEL, PAPER AND
FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL
AND SERVICE WORKERS INTERNATIONAL UNION AND (B) THE IRON
RANGE BUILDING AND CONSTRUCTION TRADES COUNCIL**

Upon consideration of the motion (the “**Motion**”),² dated February 23, 2017, of Mesabi Metallica Company LLC f/k/a Essar Steel Minnesota LLC (“**Mesabi**”) and ESML Holdings Inc. (“**Holdings**,” and, together with Mesabi, the “**Debtors**”), as debtors and debtors in possession in the above-captioned chapter 11 cases, for entry of an order authorizing, but not directing, the Debtors to enter into the Union Agreements; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding within the meaning of 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and it appearing that no other or further notice need be provided; and upon the record of all of the

¹ Essar Steel Minnesota LLC has changed its name to Mesabi Metallica Company LLC. The last four digits of its federal taxpayer identification number are 8770. The last four digits of ESML Holdings Inc.’s federal taxpayer identification number are 8071.

² Where the context requires, each capitalized term used but not otherwise defined herein shall have the meaning ascribed to such term in the Motion.

proceedings had before the Court; and the Court having found and determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and all parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Motion is GRANTED.
2. The Debtors are authorized, but not directed, to enter into the Union Agreements, substantially in the form of those attached to the Motion as Exhibits 1 and 2.
3. This Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order and to grant all other and further relief that is just and proper.

Dated: March ____, 2017
Wilmington, Delaware

Hon. Brendan L. Shannon
United States Bankruptcy Judge

EXHIBIT 1

Project Site Labor Stabilization Agreement

Between

Mesabi Metallica Company LLC

and

Iron Range Building and Construction Trades Council

and

Signatory Employers

for

Mesabi Metallica Company LLC Project (as defined herein)

located in Nashwauk, Minnesota

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PREAMBLE

This Project Site Labor Stabilization Agreement (“**AGREEMENT**”) is made and entered into this _____ day of _____, 2017 between:

- a. Mesabi Metallics Company LLC, hereinafter referred to as the “OWNER,” and
- b. the CONTRACTORS and their SUBCONTRACTORS hereinafter singularly referred to as the “**EMPLOYER**” and collectively referred to as “**EMPLOYERS**”,
- c. the Iron Range Building and Construction Trades Council, their affiliated International Unions and their respective local Unions, hereinafter singularly referred to as a “**UNION**” and collectively as the “**UNIONS**”;

for construction work on Mesabi Metallics Company LLC project to construct:

- an open pit mine;
- an on site ore processing facility;
- pellet plant;
- a direct reduction plant; and
- steel plant

located at or near Nashwauk, Minnesota (hereinafter referred to as the “**PROJECT**”) covered by this AGREEMENT

WHEREAS, the OWNER is or will be engaged in obtaining bids for the construction of the PROJECT, and

WHEREAS, it is the desire of the OWNER, EMPLOYERS, and UNIONS to enter into an AGREEMENT that complies with the requirements of section 8(e) of the National Labor Relations Act; and

WHEREAS, the primary purpose of this AGREEMENT is to prevent and resolve any and all potential or actual labor problems on the PROJECT; and

WHEREAS, to resolve any potential or actual labor problems, the EMPLOYERS, and UNIONS agree to refer any and all labor disputes arising during the term of this AGREEMENT to final

and binding arbitration, to prevent any and all strikes by any UNION, or to prevent any and all lockouts by any EMPLOYER; and

WHEREAS, to resolve any potential or actual labor problems the EMPLOYERS and the UNIONS agree, as legally permissible, to mutually establish wages, hours and working conditions for the workers employed by EMPLOYERS on the PROJECT, and further, to encourage close cooperation between the EMPLOYERS and the UNIONS to the end that a satisfactory, continuous and harmonious relationship will exist between the parties to this AGREEMENT.

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

ARTICLE I

PURPOSE

Section 1-1 The Agreements of the OWNER, EMPLOYERS, and UNIONS contained in the PREAMBLE are not a mere Recital but are incorporated herein by reference and form a part of this AGREEMENT, the same as if fully set forth herein;.

Section 1-2 The purpose of this AGREEMENT is to resolve any potential or actual labor problems, to promote efficiency of construction operations on the PROJECT, and to provide for peaceful settlement of labor disputes, to eliminate strikes, slowdowns or other interruption of work, or lockouts through final and binding arbitration of all labor disputes, thereby promoting the OWNER'S and the public interest in assuring the timely and economical completion of the construction of the PROJECT.

Section 1-3 To resolve any potential or actual labor problems the EMPLOYERS and UNIONS agree:

- 1.3.1 to set out standard working conditions for the efficient execution of said construction of the PROJECT herein,
- 1.3.2 to establish and maintain harmonious relations between all parties to the AGREEMENT,

1.3.3 to secure optimum productivity;

1.3.4 to eliminate strikes, slowdowns or other interruption of work, lockouts, or delays in the execution of the work undertaken by the EMPLOYER, and

1.3.5 to establish effective and binding methods for settlement by referring all misunderstandings, disputes or grievances which may arise during the term of the PROJECT to binding and final arbitration, without in any way negatively affecting the progress of the PROJECT work.

ARTICLE 2

RECOGNITION

Section 2-1 The EMPLOYERS are the principals and do not act as the agent of or bind the OWNER for any purpose relating to or arising out of the terms and conditions hereof. Each UNION signatory hereto agrees that it will confer and negotiate with the EMPLOYERS or their duly authorized representatives on all matters in the administration, interpretation, and enforcement of the terms of this AGREEMENT.

Section 2-2 Each EMPLOYER recognizes each UNION as the sole and exclusive bargaining representatives for its craft EMPLOYEES employed by EMPLOYER on the PROJECT.

Section 2-3 The OWNER shall not be liable for any EMPLOYER default. However, this shall not affect the right to file or the OWNER'S liability for mechanics liens. The OWNER'S responsibility under the AGREEMENT is to require all EMPLOYERS to become a party to and be bound to this AGREEMENT prior to commencing work on the PROJECT as provided in Section 3-13.

ARTICLE 3

SCOPE OF AGREEMENT

Section 3-1 The "PROJECT" is the construction under any and all phases of the underlying construction contract, including, but not limited to, the construction of an open pit mine, on site ore processing facility, pellet plant, direct reduction plant, and steel plant for the OWNER at its

site in Nashwauk, Minnesota; however, does not include any portions of the construction after acceptance by the OWNER, nor does it include the OWNER'S production operations on or the OWNER'S security at the PROJECT site.

Section 3-2 **TERRITORY.** This AGREEMENT shall cover all OWNER contracts or subcontracts for the performance of construction work at the actual site of construction or fabrication that occurs within a 50 mile radius of the PROJECT site.

Section 3-3 The parties to this AGREEMENT recognize that the work covered by this AGREEMENT is specialized, unique, proprietary, confidential construction requiring long periods of time, large-scale capital outlays, exacting construction, and performance standards including protection of the health and safety of the public and the EMPLOYEES, and a need for higher labor skills for many operations and complex managerial organizations. The careful planning and scheduling of work operations can make a major contribution in this circumstance to cost reduction and more rapid job completion.

Section 3-4 This AGREEMENT is to aid in the elimination of construction delays attributed to labor-management issues, and increasing the opportunity for more effective planning of work operations by contractors. The parties agree to abide by the terms and conditions of employment set forth in this AGREEMENT and to resolve any questions or any dispute in accordance with the procedures (including the final and binding arbitration procedures), specified in this AGREEMENT without strike, lockout, or other interruption of work operations. Additional contractors or associations of contractors may become parties to this AGREEMENT for all construction work encompassed by this AGREEMENT.

Section 3-5 This AGREEMENT shall apply and is limited to all construction and related work performed by the EMPLOYER and any subcontractors for the PROJECT at the PROJECT site only:

- a) included in all bid categories in the Construction Contract for the construction of the PROJECT for work performed on or after the effective date of this AGREEMENT; and
- b) that occurs during the term of the PROJECT as defined in Article 28.

Section 3-6 The terms of AGREEMENT shall not apply to work of an EMPLOYER that is being performed under the terms of the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, all instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructors, with the exception of Article 6 [no Strikes – No Lockouts], Article 23 [Work Stoppages and Lock-Outs], Article 19 [Craft Jurisdiction], and Article 16 [Grievance Arbitration Procedure].

Section 3-7 This AGREEMENT shall apply to construction craft EMPLOYEES only and specifically excludes other field personnel or managerial or supervisory employees including, but not limited to, executives, engineers, draftsmen, supervisors, assistant supervisors, timekeepers, messengers, office workers, guards (including the OWNER'S security forces), or other non-manual employees;

Section 3-8 The full and complete Agreement between the signatory parties is embodied in this AGREEMENT including the exhibits attached hereto. In the event of a conflict between any provisions of this AGREEMENT and those existing in the Local, Regional, or National Agreements, the terms of this AGREEMENT will be applied.

Section 3-9 DELIVERIES/HANDLING OF MATERIALS.

3.9.1 The deliveries of equipment, apparatus, machinery and construction material to the site of the PROJECT shall not be within the scope of this AGREEMENT until such equipment, apparatus, machinery and construction material is placed in the possession and control of an EMPLOYER at the PROJECT site bound by the terms of this AGREEMENT.

3.9.2 The handling of construction materials at the PROJECT site shall be the work of the appropriate craft; provided, however, that nothing herein shall limit the use of common carriers for the handling, transporting and warehousing of the OWNER'S materials and equipment;

3.9.3 The handling of construction materials at the PROJECT site and to the OWNER'S or EMPLOYER'S designated storage point at the PROJECT site shall be the work of the appropriate craft.

3.9.4 All workers delivering concrete mix, asphalt or other similar material shall receive a total package and benefits at least and not lower than the wages and benefits provided for in the then current Highway, Heavy Construction Agreement between Teamsters Local 346 and the Associated Contractors of America or the Highway Heavy prevailing wage schedule.

Section 3-10 The AGREEMENT shall be binding on the EMPLOYERS and UNIONS and shall apply to parents, affiliates, subsidiaries or other divisions of an EMPLOYER or UNION only after signature by such parent, affiliate, subsidiary, or other division of an EMPLOYER or UNION.

Section 3-11 Each EMPLOYER shall alone be liable and responsible for its own individual acts and conduct and for any breach of this AGREEMENT. Any alleged breach of this AGREEMENT by an EMPLOYER or dispute between the signatory UNION(S) and an EMPLOYER respecting compliance with the terms of this AGREEMENT shall not affect the rights, liabilities, obligations and duties between the other signatory EMPLOYERS and other UNIONS (or their locals) that are parties to this AGREEMENT;

Section 3-12 Each UNION and/or its Local UNIONS shall alone be liable and responsible for its own individual acts and conduct and for any breach of this AGREEMENT. Any alleged breach of this AGREEMENT by a signatory UNION or its locals shall not affect the rights, liabilities, obligations, and duties between the signatory EMPLOYERS and other UNIONS (or their locals) party to this AGREEMENT.

Section 3-13 The EMPLOYERS will as a condition of the bid specifications for the construction contract become a party to and be bound to this AGREEMENT. All EMPLOYERS shall also be required to execute the AGREEMENT as a condition precedent to performing work on the PROJECT. The EMPLOYER, including for their respective subcontractors, shall send a copy of each AGREEMENT to the President of the Iron Range Building Trades upon execution by each EMPLOYER.

Section 3.14 The UNIONS and all signatory EMPLOYERS agree to abide by the terms and conditions contained in this AGREEMENT with respect to the administration of the AGREEMENT by the EMPLOYER and the performance of the construction by the EMPLOYERS of the PROJECT.

ARTICLE 4

UNION-MANAGEMENT COMMITTEE

Section 4-1 The parties to this AGREEMENT agree to form a Union-Management Committee, consisting of signatory UNIONS, EMPLOYERS and the OWNER to promote harmonious labor-management relations, ensure adequate communications, advance the proficiency of the UNIONS and the EMPLOYERS, and to complete the construction of the PROJECT economically, efficiently, continuously, timely, and without interruption, delays or work stoppages.

ARTICLE 5

MANAGEMENT RIGHTS

The EMPLOYER retains full and exclusive authority for the management of their operations. Except as expressly limited by other provisions of this AGREEMENT, the EMPLOYER may direct its EMPLOYEES at its sole prerogative, including hiring or termination for just cause. No rules, customs, or practices shall be permitted or observed which limit or restrict construction or limit or restrict the joint or individual working efforts of EMPLOYEES. The EMPLOYER may utilize any methods or techniques of construction, and there shall be no limitations or restrictions on the use of machinery, pre-cast materials, equipment, tools or other labor-saving devices, nor shall there be any limitation upon the choice of materials, equipment, or design. The EMPLOYER shall assign and schedule work and shall determine when overtime will be worked. The EMPLOYER has the right to establish and enforce work rules for the job and to refuse to rehire anyone terminated for cause. The EMPLOYER shall retain all existing rights of management and all rights conferred on it by law. EMPLOYERS shall therefore have no restrictions, except those specifically provided for in this AGREEMENT.

ARTICLE 6

NO STRIKES – NO LOCKOUTS

The UNIONS, the EMPLOYERS, and the EMPLOYEES, individually, realize the importance to all parties of the uninterrupted performance of the work within the TERRITORY. The EMPLOYEES will not strike, engage in any picketing, sympathy strikes, sit-downs, stand-ins, slowdowns, wobbles, walk-offs, mass resignations, mass leave, or other refusals to work, and will refuse to honor any picket line established by anyone, whether parties to this AGREEMENT or otherwise, and will not make any attempt of any kind to dissuade others from making deliveries to, or performing services for, or otherwise doing business within the TERRITORY.

The UNIONS will not encourage, or condone any picketing, strikes, sympathy strikes, sit-downs, stand-ins, slowdowns, wobbles, walk-offs, mass resignations, mass leave, or other refusals to work of any kind, or attempts to dissuade others from making deliveries to the TERRITORY, from performing services for, or otherwise doing business within the TERRITORY, and if such prohibited activities occur, the UNIONS will take all reasonable and necessary actions to end such prohibited activities. After acceptance by the OWNER of any portion of the PROJECT (i.e., open pit mine, ore processing facility, pellet plant, direct reduction plant, steel plant, etc.) that portion of the PROJECT shall no longer be covered by this Agreement and the Unions may engage in action protected by Section 7 of the NLRA only with respect to that specific portion of the completed PROJECT accepted by the OWNER. This provision will not be used to stop construction on remaining portions of the PROJECT still under construction.

There shall be no lockout by the EMPLOYER.

In the event of any violation of the terms of this AGREEMENT, the responsible and authorized representative of the UNION signatory hereto, or EMPLOYER, as the case may be, shall promptly take such affirmative action as is within their power immediately to correct and terminate the violation.

Any EMPLOYEE who participates in or encourages any activities which interfere with the normal operations within the TERRITORY shall be subject to injunctive action and disciplinary action including discharge. The UNION shall not be liable for acts of EMPLOYEES for which it has no responsibility.

The UNIONS further agree that if any UNION or any other persons, whether parties to this AGREEMENT or otherwise, engage in any picketing or work stoppage, the UNIONS shall consider such work stoppage or picketing to be illegal, and will refuse to honor such picket line or work stoppage. The UNION agrees that it will not permit or condone any sympathy strike by its members for any reasons.

No provisions in any existing or future local or area collective bargaining agreement shall be deemed to limit or restrict the EMPLOYER'S right to fully pursue any and all remedies available under law in the event of a violation of this Article. In addition to any other action, any signatory party to this AGREEMENT may initiate the Grievance Procedures of Article 23 when a breach of this Article is alleged.

ARTICLE 7

LABOR/MANAGEMENT SAFETY COMMITTEE

Each EMPLOYER performing work on the PROJECT shall, if not already having one in place, create a Labor/Management Safety Committee, in accordance with and as required by Minnesota Statutes § 182.676 and Minnesota Rules, Chapter 5208.

ARTICLE 8

EQUAL EMPLOYMENT OPPORTUNITY

It is agreed that affirmative action shall be taken to afford equal employment opportunity to all qualified persons without regard to age, race, creed, color, sex or national origin, or any other protected class; further, equal employment opportunity shall be given to veterans and handicapped persons. This commitment shall be applicable to all matters relating to hiring, training, promotion, transfer, or termination of EMPLOYEES. Furthermore, the parties agree to

cooperate to the fullest extent to achieve the intent and purposes of Title VII, Civil Rights Act of 1964 as amended, and the Minnesota Human Rights Act.

ARTICLE 9

REFERRAL OF EMPLOYEES

Section 9-1 Each EMPLOYER shall have the unqualified right to select and hire directly all supervisors it considers necessary and desirable without such persons being referred by the UNION. Applicants for the various classifications covered by the AGREEMENT required by the EMPLOYER on the PROJECT shall be referred to the EMPLOYER by the UNIONS. The UNIONS shall be the sole source of referrals for all EMPLOYEES working in classifications covered by the AGREEMENT except as provided for in Section 9-3. The EMPLOYER shall have the right to determine the competency of all applicants or EMPLOYEES, the right to determine the number of EMPLOYEES required, and shall have the sole responsibility for selecting or rejecting EMPLOYEES and shall have the unqualified right to retrench or lay off EMPLOYEES consistent with Section 9-4. This Section is subject to the provisions of Article 21, Section 21-2, and Article 3, Section 3-5;

Section 9-2 The UNIONS represent that they administer and control their referrals and it is agreed that these referrals will be made in a nondiscriminatory manner and in full compliance with Federal, State and local laws and regulations which require equal employment opportunities and non-discrimination. Referrals shall not be affected in any way by the rules, regulations, by-laws, constitutional provisions or any other aspect or obligation of UNION membership, policies or requirements. Any complaints regarding application of the provisions of this Section 9.2 should be brought to the immediate attention of the involved EMPLOYER for consideration and resolution.

Section 9-3 In the event the referral facilities maintained by the local UNIONS do not refer the EMPLOYEES as requested by the EMPLOYER within a forty-eight (48) hour period after such requisition is made by the EMPLOYER (Saturdays, Sundays and Holidays excepted), the EMPLOYER may employ applicants from any source.

Section 9-4 The EMPLOYER agrees to be bound by the referral rules in a local area not inconsistent with the terms of this AGREEMENT and the rights of the EMPLOYER hereunder and under applicable law. However, where the referral rules that prevail in a local area are on other than an exclusive basis, such rules shall be applicable if not in violation of either State or Federal law.

Section 9-5 The UNIONS shall not knowingly or without the prior written permission of the signatory EMPLOYER refer EMPLOYEES currently employed by a signatory EMPLOYER to other employment.

Section 9-6 The UNIONS will exert their utmost efforts to recruit sufficient numbers of skilled EMPLOYEES to fulfill the manpower requirements of the EMPLOYERS.

Section 9-7 Where governmental agencies impose equal employment obligations on the PROJECT, referral procedures shall be subordinate to such governmental employment obligations, without prejudice to the rights of the EMPLOYER hereunder and applicable law.

Section 9-8 EMPLOYEES who are terminated by an EMPLOYER on the site for minor disciplinary reasons shall not be referred to another EMPLOYER on the site for a period of not less than 60 days but any subsequent EMPLOYER shall have the right to refuse the referral of the EMPLOYEE. A warning policy will be established which will require a written notification to the EMPLOYEE on the first minor violation, a written notification to the EMPLOYEE with a copy to the UNION stipulating the violation on the second minor violation. The third minor violation will result in termination subject to the final and binding arbitration provisions of Article 16 of this AGREEMENT. Where the EMPLOYEE commits a severe or serious offense including, but not limited to theft, drinking or drug use on the job, fighting, instigating labor unrest, and gross safety violations, the EMPLOYER may terminate the EMPLOYEE immediately and without prior warning. Any EMPLOYEE terminated for a minor offense shall not be eligible for rehire for a period of 60 days. Any EMPLOYEE terminated for a severe or serious offense shall not be eligible for rehire.

Section 9-9 The EMPLOYER will have the right to transfer regular EMPLOYEES and assign them to the PROJECT, provided notice is given to the applicable UNION within eight (8) days of the EMPLOYEE'S transfer or assignment.

Section 9-10 As a condition of employment there will be pre-employment certification for all welders and other applicable crafts that require certification.

Section 9-11 All EMPLOYEES will be required to complete the EMPLOYER'S, and any other required pre-certification course for safety procedures and policies after beginning employment.

ARTICLE 10

ABSENTEEISM

Section 10-1 The EMPLOYERS and the UNIONS agree that unexcused absenteeism is undesirable and must be controlled. EMPLOYEES that develop a record of such absenteeism shall be identified by the EMPLOYER to the appropriate UNION and the EMPLOYER shall support such action with the work record of the involved EMPLOYEE. Any EMPLOYEE terminated for such absenteeism shall not be eligible for rehire on the PROJECT for a period of 60 days.

ARTICLE 11

HOURS OF WORK, OVERTIME, SHIFTS AND HOLIDAYS

Section 11-1 The standard work day shall consist of eight (8) hours of work between 7 a.m. and 5:30 p.m. with one-half (1/2) hour designated as an unpaid period for lunch. The standard working hours shall be five (5) consecutive days of work commencing on Monday and ending on Friday. Nothing herein shall be construed as guaranteeing any EMPLOYEE eight (8) hours of work per day or forty (40) hours of work per week. An alternate schedule may be worked, if requested by the OWNER and/or the EMPLOYER and agreed to by the UNIONS. Starting time will be designated by the EMPLOYER; the UNION will be advised of the starting time.

Section 11-2 Any EMPLOYEE reporting for work and for whom no work is provided, except due to inclement weather or other conditions beyond the control of the EMPLOYER, shall receive two (2) hours pay at the regular straight time hourly rate. Any EMPLOYEE who starts to work and works beyond the two (2) hours will be paid for actual time worked. Whenever minimum reporting pay is provided for EMPLOYEES they will be required to remain at the PROJECT site available for work for such time as they receive pay, unless released sooner by the EMPLOYEE'S principal supervisor or designated representative. The provisions of this Section are not applicable where the EMPLOYEE voluntarily quits or as provided in Section 11-4 of this AGREEMENT, in which case he shall be paid for the actual time worked.

Section 11-3 The "workweek" shall be determined by each EMPLOYER and shall consist of 168 continuous hours. Hours worked in excess of eight (8) in any one workday or forty (40) in any one workweek shall be paid at one and one-half (1 ½) times the EMPLOYEE'S normal rate of pay. However, this provision does not affect the requirement to pay overtime under the Local Area Agreements.

Section 11-4 It will not be a violation of this AGREEMENT when the EMPLOYER considers it necessary to shut down a job or section of a contract because of an emergency situation that could endanger the life and safety of an EMPLOYEE. In such cases, EMPLOYEES will be compensated only for the actual time worked. In the case of a situation described above whereby the EMPLOYER requests EMPLOYEES to wait in a designated area available for work the EMPLOYEES will be compensated for the waiting time.

Section 11-5 Shifts may be established when considered necessary by the EMPLOYER. The details eight, ten, and twelve hour shifts are listed below:

Section 11-5(a) Shifts may be established when considered necessary by the EMPLOYER.

Section 11-5(b) Shifts shall be established and continued for a minimum of three (3) consecutive work days.

Section 11-5(c) The EMPLOYER may regulate starting times of the two shift operations to permit the maximum utilization of daylight hours.

Section 11-5(d) Where the EMPLOYER establishes a second or third shift EMPLOYEES shall receive shift differential and/or over-time payments as provided for in the Local Area Agreements or prevailing wage laws applicable to the PROJECT, whichever is higher.

Section 11-5(e) Staggered Workweek An EMPLOYER may establish a staggered workweek which may start on any day of the workweek.

Section 11-5(f) No Duplication or Pyramiding of Overtime or Other Premium Pay. For each period of time for which an employee is entitled to overtime or premium pay, he or she shall be paid in accordance with the one formula that entitles him or her to the highest rate of pay. There shall be no pyramiding of overtime or premium pay, nor the application of more than one formula to determine the amount of overtime or premium pay for each period of overtime or premium pay.

Section 11-6 Recognized holidays shall be as follows: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Day after Thanksgiving and Christmas Day. Under no circumstances shall any work be performed on Labor Day except in cases of emergency involving life or property. In the event a holiday falls on Sunday, the following day, Monday, shall be observed as such holiday; if any of the listed holidays falls on Saturday, the preceding Friday shall be observed as the holiday. There shall be no paid holidays.

Section 11-7 Holidays in lieu of those in Section 11-6 above may be established by agreement between the EMPLOYER and the Iron Range Building and Construction Trades and its affiliated International UNIONS, the International Brotherhood of Teamsters, the United Brotherhood of Carpenters, and the Laborers International Union of North America.

ARTICLE 12

SECURITY OF MATERIAL, EQUIPMENT AND TOOLS

Section 12-1 Security procedures for the control of tools, equipment and materials shall be solely the responsibility of the EMPLOYER. The EMPLOYER will be responsible to cover the costs of the full prior agreed Inventory of EMPLOYEE tools lost because of fire, flood or theft, unless the same is caused by the negligence or default of the EMPLOYEE. It is further agreed that the EMPLOYER may designate and operate centrally controlled tool rooms, warehouses, and storage areas. The EMPLOYER has the right to take all reasonable action deemed necessary to control tool losses including, without limitation, open lunch box inspection when EMPLOYEES leave the PROJECT. Tools broken or damaged in the course of employment will be replaced or reimbursement will be made by the EMPLOYER upon the presentation of satisfactory evidence. The inspection of incoming shipments of equipment, apparatus, machinery and construction materials of every kind shall be performed at the discretion of the EMPLOYER by individuals of its choice.

Section 12-2 All EMPLOYEES will strictly comply with the security procedures established by the EMPLOYER. The OWNER may establish additional security procedures applicable to the PROJECT.

ARTICLE 13

WAGES, BENEFITS AND WORKING CONDITIONS

Section 13-1 Any EMPLOYER performing work on the PROJECT which is not party to a Local Area Labor Agreement for a craft employed by EMPLOYER, agrees to install hourly wage rates, hours, fringe benefit contributions, referral procedures and all other terms and conditions of employment as fully set forth in the Local Area Agreements (as attached as Exhibit A) for work on the PROJECT for each craft employed by the EMPLOYER. This is a "prevailing wage" Project. EMPLOYEES shall receive at least the rates, hours and fringe benefits under the Minnesota Department of Labor and Industry's Prevailing Wage schedule for Itasca County for Commercial Construction (Exhibit B) Each EMPLOYER shall post the then current Prevailing Wage Schedule. Where the Prevailing wage schedule is higher than the total

package of wages and fringe benefit contributions set forth in a Local Area Agreement for a craft employed by EMPLOYER, the EMPLOYER shall increase the hourly wages for that craft such that the total package of wages and fringe benefits equal the prevailing wage schedule.

Section 13-2. The EMPLOYER and the UNIONS agree that wage premiums, such as those based on height of work, type of work or materials, special skills, etc. impose unreasonable costs on construction, are considered contrary to the best interest of the industry, and shall not be paid on the PROJECT. This limitation does not apply to Cooling Tower, Stack Work, and National Transient Lodge (NTL) Agreement.

Section 13-3 The EMPLOYER and the UNIONS agree that the EMPLOYERS shall pay EMPLOYEE benefits such as pension, health and welfare, vacation, apprenticeship and training funds, contractor association and industry development funds for all work on the PROJECT as provide for in the Local Area Agreements.

Section 13-4 The EMPLOYER adopts and agrees to be bound by the written terms of legally established trust agreements specifying the detailed basis on which payments are to be made into, and benefits paid out of such trust funds. The EMPLOYER authorizes the parties to such trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the EMPLOYER.

Section 13-5 In the event an EMPLOYER is proven to be in arrears of applicable fringe benefit payments, the OWNER or its representative, General Contractor, or PROJECT Manager has the right, but not the obligation, to pay or withhold a subcontractor's unpaid fringe benefits and forward directly to a fund office and such payment shall be set off against any payments otherwise due the EMPLOYER.

ARTICLE 14

APPRENTICES-TRAINEES/HELPERS/SUBJOURNEYPERSONS

Section 14-1 Recognizing the need to maintain continuing support of programs designed to develop adequate numbers of competent EMPLOYEES in the construction Industry; the EMPLOYER may at its sole discretion employ apprentices in the respective crafts to perform

such work as is within their capabilities and which is customarily performed by the craft in which they are indentured.

ARTICLE 15

PAYMENT OF WAGES-CHECKING IN AND OUT

Section 15-1 Wages will be paid weekly by check on a designated day during working hours and in no case shall more than five (5) days pay be held back (In any one payroll week). Wages on layoff will be paid on layoff)

Section 15-2 The EMPLOYER may utilize brassing, time clocks, hand print systems or other systems to check EMPLOYEES in and out. Each EMPLOYEE must check himself in and out. The EMPLOYER will provide adequate facilities for checking in and out in an expeditious manner.

Section 15-3 Should EMPLOYEE parking be required at a distance in excess of one-half (1/2) mile from the gate such that busing is necessary, busing will be provided by EMPLOYER. Busing to the site will be done on the EMPLOYEE'S time and from the site on the EMPLOYER'S time; The administration of busing shall be established by the Union Management Committee.

ARTICLE 16

GRIEVANCE ADJUDICATION PROCEDURE

Section 16-1. The EMPLOYERS, UNIONS and EMPLOYEES, collectively and individually, realize the importance to all parties to maintain continuous and uninterrupted performance of the work of the PROJECT and agree to resolve disputes over grievances in accordance with the procedures set forth below. All work on the PROJECT shall continue uninterrupted before, during, and after the pendency of any grievance or other dispute between or among the parties.

Section 16-1a It is specifically agreed that all questions of jurisdiction of work shall be decided under the arbitration provisions of Article 18. All alleged violations of Article 23

shall be decided under the arbitration procedures of Article 23. Any and all other disputes that arise out of the interpretation of this AGREEMENT shall be resolved by the final and binding arbitration procedures set out in this Article. No such grievance subject to this Article shall be recognized unless, by written notice the alleged violation is called to the attention of the EMPLOYER by the UNION or to the attention of the UNION by the EMPLOYER within five (5) calendar days after the alleged violation was committed, or if the violation was not ascertainable within five (5) calendar days of first knowledge of the facts giving rise to the grievance.

Section 16-1b Grievances shall be resolved according to the following procedure:

Step 1: The dispute shall be referred to the Business Representative of the local UNION involved or his designated representative and the PROJECT Manager, Construction Superintendent and the EMPLOYER'S representative at the PROJECT with a copy to the PROJECT Superintendent. A meeting between the UNION'S representative and the EMPLOYER'S representative must be held within three (3) working days after the written notice is given.

Section 16-1c

Step 2: In the event that the Business Representative of the local UNION and PROJECT Superintendent and/or the EMPLOYER representative at the PROJECT cannot reach agreement within five (5) calendar days after the Step 1 meeting, the matter shall then be referred to Step 3.

Section 16-1d

Step 3: If the dispute is not resolved within five (5) calendar days after completion of the Step 2 meeting, the EMPLOYER and the UNION shall contact the permanent Arbitrator selected by the parties to conduct the hearing. If the permanent Arbitrator is unable to serve the alternative permanent Arbitrator shall conduct the hearing. If both cannot serve the Arbitrator shall be selected from a panel of seven (7) arbitrators submitted by and in accordance with the rules and

regulations of the Federal Mediation and Conciliation Service. The decision of the Arbitrator shall be final and binding upon 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 EMPLOYER and the involved UNION. The parties shall hold the hearing within 30 days of contacting the Arbitrator and a decision shall be issued by the Arbitrator within 15 days after hearing. The parties agree that Richard Miller, if willing to serve shall be the permanent Arbitrator and Jeff Jacobs, if willing to serve, shall be the alternate. If neither are available, the parties may by mutual agreement agree to the identity of an Arbitrator. In the event the parties cannot agree on an alternate arbitrator, a list of seven (7) arbitrators shall be requested from the Federal Mediation and Conciliation Service ("FMCS"). The party winning a coin flip shall have the right to make the second of alternating strikes to select the arbitrator.

Section 16-2 The time limits specified in any step of the Grievance Procedure may be extended by mutual written agreement of the parties. However, the failure to process a grievance, or failure to respond in writing within the time limits provided above, without a written agreement extending the time shall be deemed a waiver of such grievance to the other with prejudice to the subject grievance, but without precedent to the processing of and/or resolution of like or similar grievances or disputes.

Section 16-3 In order to encourage the resolution of disputes and grievances at Steps 1 and 2 of this Grievance Procedure, the parties agree that such settlements shall not be precedent-setting.

ARTICLE 17

UNION SECURITY

Section 17-1. All EMPLOYEES covered by this AGREEMENT now in the employ of the EMPLOYER shall remain members in good standing in the UNION during the term of this AGREEMENT, and all workers hereinafter employed by the EMPLOYER, will become

members of the UNION within seven (7) days after the date of their employment and shall remain members of the UNION in good standing during the term of this AGREEMENT.

Section 17-2. In interpreting good standing, an EMPLOYER shall not discharge any EMPLOYEE for non-membership in the UNION:

(a) if he has reasonable grounds for believing that such membership was not available to the EMPLOYEE on the same terms and conditions generally applicable to other members, or

(b) that the EMPLOYER has reasonable ground for believing that membership as denied or terminated for reasons other than the failure of the EMPLOYEE to tender the periodic dues and initiation fee uniformly required as a condition of acquiring or retaining membership.

Section 17-3. The UNION agrees to defend and indemnify the EMPLOYER in connection with any amounts withheld from any EMPLOYEE at the request of the UNION.

ARTICLE 18

CRAFT JURISDICTION

Section 18-1 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 18-2 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 parties to this Agreement.

Section 18-3 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. Individual's violating this section shall be subject to immediate discharge.

Section 18-4. 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.

Section 18-5. The question of the proper assignment of work shall be resolved pursuant to the procedures of Article 18. However, any claim by any party of a strike, lock-out, sympathy strike, picketing, work stoppages, slow downs, interference with the work or other disruptive activity as the result of a jurisdictional dispute shall be resolved pursuant to Article 23.

ARTICLE 19

UNION REPRESENTATIVES

Section 19-1 Authorized representatives of the UNIONS shall have access to the PROJECT provided they do not interfere with the work of the EMPLOYEES and further provided that such representatives fully comply with the visitor, safety and security rules established for the PROJECT.

Section 19-2 Each UNION that is a party to this AGREEMENT shall have the right to designate a working Journey Person as a Steward for each EMPLOYER for each shift. Additional Stewards may be negotiated between the parties in order to prevent a Steward from being required to leave their general work area to perform UNION business because of the number of EMPLOYEES or the geographic size of the work site. The Steward will be paid at the journeyman wage rate for the job classification in which the Steward is employed. Such designated Steward shall be a qualified EMPLOYEE performing the work of one signatory craft and shall not exercise any supervisory functions. The Steward shall be concerned with the EMPLOYEES of the Steward's EMPLOYER and not with the EMPLOYEES of any other EMPLOYER. In the event the Steward negatively impacts job productivity or efficiency, the EMPLOYER shall bring its concerns to the Labor-Management Committee. If the productivity

and efficiency issues are not resolved they may be referred to the Grievance procedure of Article 16.

Section 19-3 In order for the Steward to work overtime, the Steward must be qualified to perform the work being undertaken during the overtime period.

Section 19-4 The Steward shall, in addition to working as a journeyman, be permitted to perform during working hours, only such union duties as cannot be performed at other times. The UNION agrees that such duties shall be performed as expeditiously as possible, and EMPLOYER agrees to allow the Steward a reasonable amount of time for the performance of such duties. The EMPLOYER shall not discriminate against the Steward in the proper performance of the Steward's union duties. The Steward shall not leave the work area without first notifying the appropriate supervisor and receiving his approval; such approval will not be unreasonably withheld.

Section 19-5 The working Steward will not be entitled to any preferential treatment by the EMPLOYER, except to perform the union duties permitted under Section 19-5 during working hours, have first chance to work any overtime if qualified to perform the work as stated in Section 19-4, and be protected against reduction in force as long as work is available and the Steward is qualified to perform the work as in Section 19-3, but will be subject to discipline, including discharge for cause, to the same extent as other EMPLOYEES, provided however, that the UNION shall be notified twenty-four (24) hours prior to the discharge. Should a Steward be discharged, the UNION may appoint a replacement but work shall continue without disruption. The Steward shall have the right to receive complaints or grievances and to discuss and assist in the adjustment of the same with the EMPLOYEE'S appropriate supervisor. This section is subject to the grievance and arbitration provisions of Article 16 of this AGREEMENT.

Section 19-6 The Steward's duties shall not include hiring and termination nor shall the Steward cause any interference with work progress. Each Steward shall be concerned with the EMPLOYEES of the Steward's EMPLOYER and not with the EMPLOYEES of any other EMPLOYER. Stewards shall not have the right to determine when overtime shall be worked or

who shall work overtime, or to interfere with any of the other supervisory functions of the EMPLOYER.

Section 19.7 On PROJECTS where the OWNER'S personnel may be working in close proximity of the construction activities, the UNIONS agree that under any and all conditions UNION representatives, Stewards and individual workman will not interfere in any manner with the OWNER'S personnel or with the work which is being performed by the OWNER'S personnel.

Section 19-8 The parties agree that the OWNER has a legal standing and the right to use and invoke the Grievance Procedures of Article 23 in the event there is an unlawful disruptive activity or an illegal strike of the PROJECT site regarding work performed by the OWNER on the PROJECT.

ARTICLE 20

TRAVEL AND SUBSISTENCE

Section 20-1 Travel expenses, travel time, subsistence allowance, and/or zone rates shall be paid pursuant to the Local Area Agreements but shall not exceed \$35 per working day.

ARTICLE 21

GENERAL WORKING CONDITIONS

Section 21-1 Employment begins and ends at the PROJECT site.

Section 21-2 The selection of craft foremen and/or general foremen shall be entirely the responsibility of the EMPLOYER. All general foremen shall take orders from the designated EMPLOYER representatives.

Section 21-3 There shall be no limit on production by EMPLOYEES nor restrictions on the full use of tools or equipment. EMPLOYEES using tools shall perform any of the work of the trade and shall work under the direction of the craft foremen. There shall be no restrictions on efficient use of manpower other than as may be required by safety regulations.

Section 21-4 EMPLOYEES shall be at their place of work at the starting time and shall remain at their place of work performing their assigned functions under the supervision of the EMPLOYER until quitting time except as provided for in Section 15-3. The parties reaffirm their policy of a fair day's work for a fair day's wage.

Section 21-5 All equipment assigned to the PROJECT shall be under the control of the EMPLOYER. The EMPLOYER shall have the right to determine how many pieces of equipment an individual EMPLOYEE shall operate. In an emergency, foremen shall operate any equipment assigned by the EMPLOYER, and there shall be no restriction on foremen in the use of the tools of his craft in such emergency. The foremen shall be from the craft normally operating the equipment. In accordance with currently recognized craft jurisdiction, the EMPLOYER shall determine the assignment of EMPLOYEES to start, stop, and maintain small portable construction equipment. Such work may be assigned to craft EMPLOYEES within a reasonable distance of their primary duties or an EMPLOYEE may be assigned full time to start, stop and maintain the EMPLOYEE'S small, portable equipment on the job site. There shall be no over manning of this type of equipment. The number of EMPLOYEES assigned to rigging and scaffolding operations shall be at the sole discretion of the EMPLOYER.

The ratio of journeyman to welders shall be determined solely by the EMPLOYER.

Section 21-6 The EMPLOYER may utilize the most efficient methods or techniques of construction, tools or other labor saving devices to accomplish the work. Practices not a part of the terms and conditions of this AGREEMENT such as stand by crews and feather bedding practices will not be recognized.

Section 21-7a Where specialized components crucial to the manufacturing process need to be installed the OWNER may utilize employees of the specialty component manufacturer or an authorized service provider of the manufacturer to perform work on the PROJECT. Such employees may work on the PROJECT provided the manufacturer of the specialty component requires that in order for the OWNER to receive a warranty or performance guaranty, the OWNER must use the manufacturer's employees or an authorized service provider of the manufacturer to install or assist in the installation of the specialty component. In addition, such

employees may be used if the manufacturer requires such to maintain a trade secret or confidential information. The OWNER shall utilize the smallest crew of specialty component manufacturer or authorized service provider employees possible but which still allows the OWNER to receive the warranty and/or performance guaranty. The remainder of the crew for the installation of the specialty component shall be employees covered by this AGREEMENT. This provision is intended to allow specialty component manufacturer or authorized service provider employees with particular training and experience specific to the component being installed and beyond the skills of journey persons employed by the EMPLOYERS to work on the PROJECT. When employees of the specialty component manufacturer or an authorized service provider of the manufacturer are required for installation of specialized equipment, the vendor may supervise the installation.

Section 21-7b Issues involving construction of specialized component manufacturing will be addressed by the Union Management Committee in the best interest of the PROJECT.

Section 21-7c Once the OWNER accepts a completed phase of the PROJECT the OWNER may use EMPLOYER'S personnel, manufacturer's personnel, vendor's representative and consultants, or its own personnel to perform work without limitation on the completed phase of the PROJECT.

Section 21-8 Neither the UNION nor its Local UNIONS shall coerce or in any way interfere with the OWNER'S personnel, operation or facilities at the PROJECT site. The OWNER'S right to do work at the plant site shall not be limited, except as provided for in Section 21-7 and the UNION shall cooperate and not interfere with the OWNER'S operations. In this regard, it is further understood and agreed that the OWNER has the right to employ security forces of its own choosing and that the OWNER'S choice of security forces shall be without interference or challenge from or disruptive activities by the UNIONS.

Section 21-9 It is recognized that overtime is undesirable and not in the best interest of the industry or the EMPLOYEES. Notwithstanding this recognition, the EMPLOYER will have the right to assign specific EMPLOYEES and/or crews to perform such overtime work as is necessary to accomplish the job.

Section 21-10 The only rest periods or other non-working time established during working hours shall be two (2) ten (10) minute coffee breaks per working day in a clean, warm and suitable area in close proximity to the work at times to be mutually agreed upon between the EMPLOYER and the UNION. If an EMPLOYEE is working a ten (10) hour shift or more the EMPLOYEE shall have an additional ten (10) minute coffee break. If the EMPLOYEE works more than four (4) overtime hours beyond an eight (8) hour day the EMPLOYEE shall receive a thirty (30) minute paid lunch break.

Section 21-11 Individual seniority shall not be recognized or applied to EMPLOYEES working on the PROJECT under this AGREEMENT.

Section 21-12 The OWNER and the EMPLOYER shall establish such reasonable PROJECT rules as deemed appropriate not in conflict with the Local Area Agreements. These rules will be reviewed at the pre-job conference and posted at the PROJECT site by the EMPLOYER, and may be amended from time to time thereafter as necessary.

Section 21-13 Only qualified, Certified Crane Operators (CCO) may operate cranes of any make, type or model except for overhead cranes.

ARTICLE 22

SAFETY

Section 22-1 The EMPLOYEES covered by the terms of this AGREEMENT shall at all times while in the employment of the EMPLOYER be bound by the safety rules and regulations as established by the EMPLOYER in accordance with the Construction Safety Act, OSHA/MSHA, and any other workplace safety act or regulation.

The EMPLOYER'S rules and regulations will be published and posted at conspicuous places throughout the PROJECT.

Section 22-2 In accordance with the requirements of OSHA/MSHA, it shall be the exclusive responsibility of each EMPLOYER on a jobsite to which this AGREEMENT applies, to assure safe working conditions for its EMPLOYEES and compliance by them with any safety rules contained herein or established by the EMPLOYER. Nothing in this AGREEMENT will make

the UNIONS liable to any EMPLOYEES or to other persons in the event that injury or accident occurs.

Section 22-3 In keeping with the philosophy of maintaining a drug and alcohol free workplace for all EMPLOYEES, EMPLOYEES will be subjected to drug or alcohol testing as authorized under Minnesota state law regulating such testing of EMPLOYEES and pursuant to the drug and alcohol testing policy as established by the EMPLOYER for the PROJECT.

ARTICLE 23

WORK STOPPAGES AND LOCKOUTS

Section 23-1 During the term of this AGREEMENT there shall be no strikes, sympathy strikes, picketing, work stoppages, slow downs, mass leave, interference with the work or other disruptive activity for any reason by the UNION or by any EMPLOYEE and there shall be no lockout by the EMPLOYER. Failure of any UNION or EMPLOYEE to cross any picket line established by any UNION, signatory or non-signatory, or any other organization at or in proximity to the EMPLOYEES' PROJECT site is a violation of this Article.

Section 23-2 The UNION shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity at the PROJECT and shall undertake all reasonable means to prevent or to terminate any such activity. No EMPLOYEE shall engage in activities which violate this Article. Any EMPLOYEE who participates in or encourages any activities which interfere with the normal operation of the PROJECT shall be subject to disciplinary action, including discharge, and, shall not be eligible for rehire on the same PROJECT.

Section 23-3 Neither the UNION nor its applicable local UNION shall be liable for acts of EMPLOYEES for which it has no responsibility. The principal officer or officers of a local UNION will immediately instruct, order and use the best efforts of his office to cause the EMPLOYEES the local UNION represents to cease any violations of the Article. A local UNION complying with its obligation shall not be liable for unauthorized acts of EMPLOYEES it represents. The failure of the EMPLOYER to exercise its right in any instances shall not be deemed a waiver of its right in any other instance.

Section 23-4a The UNION(s) agrees that if any UNION or any other persons, whether parties to the AGREEMENT or otherwise, engage in any picketing or work stoppage, the signatory UNIONS shall call such work stoppage or picketing to be illegal, and refuse to honor such picket line or work stoppage.

Section 23-4b Since there are provisions herein for no strikes or lockouts, in the event any changes are negotiated and implemented under local agreements during the term of this AGREEMENT, the EMPLOYER agrees that, except as specified herein, such changes shall be recognized and shall apply retroactively to the termination date of the particular local agreement involved. Each EMPLOYER which has a local Agreement with a signatory UNION at the time that its contract at the PROJECT commences shall continue to maintain any such local Agreement in effect with each said UNION so long as the EMPLOYER remains on the PROJECT. In the event any such local Agreement expires, the EMPLOYER shall abide by all of the terms of the expired local Agreement until agreement is reached on a new local Agreement, with any changes being subject to the provisions of this Section 23-4b. In no event shall the expiration of a local agreement between an EMPLOYER and a signatory UNION permit any EMPLOYER or any UNION to engage in any strikes, lockouts or other conduct prohibited by this AGREEMENT.

Section 23-5 There shall be no strikes, sympathy strikes, picketing, work stoppages, slowdowns, interference with the work or other disruptive activity affecting the PROJECT site during the term of this AGREEMENT. Any UNION or Local UNION which initiates or participates in a work stoppage in violation of this Article, or which recognizes or supports the work stoppage of another UNION or Local UNION which is in violation of this Article, agrees as a remedy for said violation, to pay liquidated damages in accordance with Section 23-7h. The remedy of liquidated damages is in addition to any other remedy the OWNER or EMPLOYER may have to enforce the provisions of this Article.

Section 23-6 Any party alleging a breach of Section 23-1 shall have the right to petition a court for temporary or permanent injunctive relief. The moving party need not show the existence of irreparable harm and shall be required to post bond only to secure payment of court costs and attorney fees as may be awarded by the court.

Section 23-7 In addition to any other action at law or equity, any party may institute the following final and binding arbitration procedure when a breach of this Article is alleged, after the UNION(s) and/or local UNION(s) have been notified of the fact.

Section 23-7a The parties shall select within 30 days after execution of this AGREEMENT a permanent Arbitrator to hear disputes under this procedure. In the event that the permanent Arbitrator is unavailable at any time, the parties shall appoint an alternate. The appointed Arbitrators shall also serve under Article 16. Notice to the Arbitrator shall be by the most expeditious means available, with notice by electronic means or any other effective written means, to the Building and Construction Trades Department and the involved International UNION President(s) and Local UNION(s).

Section 23-7b Upon receipt of said notice the Arbitrator named above shall set and hold a hearing within twenty-four (24) hours if it is contended that the violation still exists.

Section 23-7c The Arbitrator shall notify the parties by electronic means or any other effective written means, of the place and time chosen for this hearing. Said hearing shall be completed in one session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an Award by the Arbitrator.

Section 23-7d The sole issue at the hearing shall be whether or not a violation of this Article has in fact occurred. The Award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without an Opinion. If any party desires an Opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the Award. The Arbitrator may order cessation of the violation of this Article, and such Award shall be served on all parties by hand or registered mail upon issuance.

Section 23-7e Such Award may be enforced by any court of competent jurisdiction upon the filing of this AGREEMENT and all other relevant documents referred to hereinabove in the following manner. Electronic notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the Arbitrator's Award as issued under Section 23-7 of this Article, all parties waive the right to a hearing and agree that such proceedings may be *ex parte*. Such agreement does not waive any party's

right to participate in a hearing for a final order of enforcement. The Courts order or orders enforcing the Arbitrator's Award shall be served on all parties by hand or by delivery to their last known address or by registered mail.

Section 23-7f Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance therewith are hereby waived by the parties to whom they accrue.

Section 23-7g The fees and expenses of the Arbitrator shall be borne by the party or parties found in violation, or in the event no violation is found, such fees and expenses shall be borne by the moving party.

Section 23-7h If the Arbitrator determines that a violation has occurred in accordance with Section 23-7d above, the party or parties found to be in violation shall pay as liquidated damages, the following amounts: for the first shift in which the violation occurred, \$10,000; for the second shift, \$15,000; for the third shift, \$20,000; for each shift thereafter on which the craft has not returned to work, \$25,000 per shift.. The Arbitrator shall determine whether the specified damages in this Section shall be paid to the OWNER, or the affected EMPLOYER, pr both. The Arbitrator shall retain jurisdiction to determine compliance with this section and Section 23-3 of this Article.

Section 23-8 The procedures contained in Sections 23-7 through 23-7h shall be applicable to alleged violations of this Article. Disputes alleging violation of any other provision of this AGREEMENT including any underlying disputes alleged to be in justification, explanation or mitigation of any violation of this Article, shall be resolved under the grievance adjudication procedures of Article 16.

ARTICLE 24

SUBCONTRACTING

Section 24-1 The EMPLOYER agrees that neither it, nor any of its subcontractors will subcontract any work to be done on the PROJECT except to a person, firm or corporation party to this AGREEMENT unless the subcontractor is performing work beyond the designated

TERRITORY of this AGREEMENT. Any contractor or subcontractor working on a PROJECT covered by this AGREEMENT shall as a condition to working on said PROJECT become signatory to and perform all work under the terms of this AGREEMENT.

ARTICLE 25

HELMETS TO HARDHATS

Section 25-1 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 for 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 25-2 The UNIONS 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 26

AMENDMENTS

Section 26-1 Amendments to this AGREEMENT which are required to place the EMPLOYER in a more competitive position may be established by the EMPLOYER and the UNION(S), which directly addresses the competitive problem. Such an agreement shall be reduced to writing and shall be considered an extension and part of this Agreement for the particular PROJECT.

Section 26-2 Any need for interpretation which might arise from the application of the terms of an amendment, established under this AGREEMENT, shall be referred directly to grievance procedure found in Article 16.

ARTICLE 27

GENERAL SAVINGS CLAUSE

Section 27-1 If any Article or provision of this AGREEMENT shall be declared invalid, inoperative or unenforceable by any competent authority of the executive, legislative, judicial or administrative branch of the Federal or any State government, the EMPLOYER and the UNION shall suspend the operation of such Article or provision during the period of its invalidity and shall substitute by mutual consent, in its place and stead, an Article or provision which will meet the objections to its validity and which will be in accord with the intent and purpose of the Article or provision In question.

If any Article or provision of the AGREEMENT shall be held invalid, inoperative or unenforceable by operation of law or by any of the above mentioned tribunals of competent jurisdiction, the remainder of this AGREEMENT or the application of such Article or provision to persons or circumstances other than those as to which it has been held invalid, inoperative or unenforceable shall not be affected thereby.

ARTICLE 28

TERM OF AGREEMENT

Section 28-1 This AGREEMENT shall not be amended or supplemented except by mutual consent of the parties hereto, reduced to writing and duly signed by each.

Section 28-2 This AGREEMENT shall be effective on the first date on which each of the following conditions has been met or waived in writing by the Iron Range Building and Construction Trades Council and OWNER (the “**Effective Date**”):

- (a) the United States Bankruptcy Court for the District of Delaware has entered an order approving this AGREEMENT; and

(b) the United States Bankruptcy Court for the District of Delaware has confirmed a plan of reorganization for OWNER in OWNER'S case under chapter 11 of title 11, United States Code, pursuant to which OWNER will emerge from chapter 11 as a reorganized debtor and the plan has become effective.

Once in effect, this AGREEMENT shall remain in full force and effect for the duration of the PROJECT construction work described in Article 3 and 28 hereof.

ARTICLE 29

DEFINITIONS USED IN THIS AGREEMENT

“AGREEMENT” means the “Project Site Labor Stabilization Agreement.”

“PROJECT” means “the construction under any and all phases of the underlying construction contract or, including, but not limited to, the construction of an open pit mine, on site ore processing facility, pellet plant, direct reduction plant, and steel plant for the OWNER at its site in Nashwauk, Minnesota. ; however, does not include any portions of the construction after acceptance by the OWNER, nor does it include the OWNER’S production operations on or the OWNER’S security at the PROJECT site.”

“TERM” of the AGREEMENT means “any time any work is being performed on the PROJECT by any signatory EMPLOYER or UNION that is within the Scope of Work as defined in the AGREEMENT.”

“OWNER” means Mesabi Metallica Company LLC.

“EMPLOYER” means any contractor performing work on the PROJECT; however, does not include the OWNER”

“EMPLOYEE” means a person employed by an EMPLOYER performing work on the PROJECT, but does not mean an employee of the OWNER;

“MANUFACTURE” means goods ordered by OWNER for installation on the PROJECT but excludes materials fabricated under an EMPLOYER’S contract on the PROJECT;

“FABRICATION” means “items made for EMPLOYER(S)’ performance of work on the PROJECT by or at EMPLOYER(S)’ or OWNER’S request within the PROJECT TERRITORY

“DISRUPTIVE ACTIVITY” means “lockouts, picketing, strikes, sympathy strikes, sit-downs, stand-ins, slowdowns, wobbles, walk-offs, mass resignations, mass leave or other refusals to work of any kind, or attempts to dissuade others from making deliveries to the TERRITORY, from performing services for, or otherwise doing business within the TERRITORY;

“**TERRITORY**” means the PROJECT site and any work done on the PROJECT within a fifty (50) mile radius of the PROJECT.

Mesabi Metallica Company LLC

Dated: _____

By: _____
Its: _____

Iron Range Building and Construction
Trades Council

Dated: _____

By: _____
Its: _____

SIGNED FOR THE CONTRACTOR

Dated: _____

Company Name

By: _____
Its: _____

Company Address

Phone No.

Fax No.

e-mail Address

EXHIBIT 2

Neutrality

This Agreement is between Mesabi Metallics Company LLC (hereinafter referred to as the "Company") and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (a/k/a "United Steelworkers"), AFL-CIO, CLC, (hereinafter referred to as the "Union"). This Agreement is subject to the following conditions being met or waived in writing by the Union and the Company: (a) the United States Bankruptcy Court for the District of Delaware entering an order approving this Agreement; and (b) the United States Bankruptcy Court for the District of Delaware confirming a plan of reorganization for the Company in the Company's case under chapter 11 of title 11, United States Code, pursuant to which the Company will emerge from chapter 11 as a reorganized debtor and the plan has become effective.

For the purposes of this Agreement, the Company shall include any of the Company's subsidiaries and any other entity which is under the direct ownership and control of the Company.

1. NEUTRALITY

- A. The Company agrees to be Neutral regarding the unionization of any non-represented production and maintenance employees ("Employees") of the Company.
- B. Neutral means that, except as explicitly provided herein, the Company will not at any time involve itself in the matter of whether or not its Employees will be unionized.
- C. The Company's commitment to remain Neutral shall cease if the Company demonstrates to an arbitrator that the Union is intentionally misrepresenting to Employees facts surrounding their employment or is demeaning the integrity or character of the Company or its representatives.

2. ORGANIZING PROCEDURES

- A. Promptly following the Union providing the Company with a written notice indicating its desire to represent a proposed bargaining unit at a workplace owned, controlled or operated by the Company (including a description of such bargaining unit), the parties will engage in a good faith effort to reach agreement on the appropriate bargaining unit, using NLRB principles. If the parties are not able to reach an agreement on the appropriate bargaining unit, then the matter will be submitted to an arbitrator for resolution pursuant to Section 3 below.

- B. Within 5 business days after the appropriate bargaining unit has been determined, the Company will provide the Union with a list of all Employees in the proposed bargaining unit, including full name, home address, job title and department.¹ Union agrees to use this information only in relation to its activities under this Agreement and will not use the information for any other purposes nor disseminate the information to any other parties. Union also agrees that it will defend, indemnify and hold harmless the Company for any cost, loss, expense, liability, claim, demand or damages (including reasonable legal fees and costs incurred by the Company to enforce this defense, indemnity and hold harmless provision) arising out of or resulting from any use or dissemination of the information in violation of this provision. The Company reserves the right to designate the firm that will defend it in the event that legal representation is retained to defend the Company under this section of the Agreement.
- C. Upon written request by the Union, the Company will grant the Union reasonable access to its facilities to distribute literature and meet with unrepresented Employees in the proposed bargaining unit in well-traveled non-work areas during non-work times (including breaks, lunch periods, and before and after shift changes) on a day-to-day basis. Any Union organizer or Union representative who is going to be granted access to the Company's facilities or premises under this Agreement must have a current MSHA certification. Union agrees that it will defend, indemnify and hold harmless the Company for any cost, loss, expense, liability, claim, demand or damages (including reasonable legal fees and costs incurred by the Company to enforce this defense, indemnity and hold harmless provision) arising out of or resulting from (i) injury to the person or property of any Union organizer or Union representative incurred or sustained during the course of any visit to the Company's premises or facilities; or (ii) injury to the person or property of the Company, its affiliates, employees or agents, or any third party, arising from the negligent or willful act or omission of the Union or any Union organizer or Union representative during any such visit to the Company's facilities or premises. The Company reserves the right to designate the firm that will defend it in the event that legal representation is retained to defend the Company under this section of the Agreement.
- D. Upon written request by the Union, the Company will recognize the Union without an NLRB election if the Union secures a simple majority of authorization cards of the Employees in the proposed bargaining unit (card check recognition). The card check will be

¹ The Company also agrees to provide subsequent monthly updates of this information to the Union.

conducted by a mutually agreeable neutral third party within 5 business days after the Union's request. The neutral third party shall maintain the confidentiality of the cards. After the Union has been recognized as the exclusive representative of the Employees in the proposed bargaining unit, the Company and Union shall promptly begin the process of negotiating the initial collective bargaining agreement. The process of negotiating the initial collective bargaining agreement, or any issues or disputes that may arise in the course of that process, shall not be subject to the dispute resolution process set forth below.

3. DISPUTE RESOLUTION

- A. Except as otherwise noted above, any alleged violation or dispute involving any aspect of this Agreement, including, but not limited to, the scope, make-up or definition of a proposed bargaining unit, will be brought before a mutually agreed-to arbitrator within 15 business days of submission of the dispute by the charging party.
- B. The arbitrator shall rule on the dispute at the close of the hearing. The arbitrator's decision will be final and binding on the parties.

4. TERM OF AGREEMENT

This Agreement shall be in effect starting on the date when the Company first commences operations (i.e., starts producing pellets for sale to its customer(s)) and this Agreement shall automatically expire and terminate one year thereafter.

Agreed to (date)_____

For the Company:

For the Union:
