

JURISDICTIONAL ASSIGNMENT PLAN

of the

ALBERTA CONSTRUCTION INDUSTRY

established by

Coordinating Committee of Registered Employer Organizations
representing the respective Registered Employers' Organizations

and the

**Alberta & N.W.T. (District of MacKenzie) Building and Construction
Trades Council**
representing the Local Unions Affiliated with the Council

As Revised and Issued:
March 15, 2005

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MEMORANDUM OF UNDERSTANDING

establishing the Jurisdictional Assignment Plan

An Agreement By and Between:

**COORDINATING COMMITTEE OF
REGISTERED EMPLOYERS' ORGANIZATIONS
(hereinafter referred to as the "Coordinating Committee")**

and the:

**ALBERTA & N.W.T. (DISTRICT OF MACKENZIE) BUILDING
AND CONSTRUCTION TRADES COUNCIL
(hereinafter referred to as the "Council")**

**(The "Coordinating Committee" and the "Council" may
be referred to collectively herein as the "Parties")**

ARTICLE I

This Memorandum and the attached Procedural Rules, having been adopted by vote of the Parties, both on their own account and on behalf of, respectively, the Registered Employers' Organizations and the affiliated Local Unions at various times during the month of January, 1994, will come into effect upon the date the Regulation made by the Minister pursuant to section 202 of the Alberta Labour Relations Code takes effect.

ARTICLE II

This Plan is a serious attempt, extending over many years of consultation, to work out a viable system of skilled and impartial work assignment within the construction industry in Alberta that is **within** and **supplementary** to the workings of the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry covering the U.S. and Canada as established by the major Contractor Associations and the Building and Construction Trades Department AFL-CIO, or its Canadian successor (which Plan shall be referred to herein and in the attached Procedural Rules as the "Canadian Plan").

ARTICLE III

It is recognized by both parties that due to time loss, wildcats, disruption of work continuity and the ensuing poor publicity that there is a real and ever present danger of governmental intervention in the question of construction jurisdictional disputes.

ARTICLE IV

It is further recognized that the already existing interventions by governments in certain other jurisdictions have not been found satisfactory or desirable by either Employer or Employee organizations. It is agreed that a mutually acceptable Plan freely negotiated by both parties is a preferable resolution to the problem.

ARTICLE V

There is agreement that the Canadian Plan is a viable and workable system of **adjudication** of jurisdictional disputes. From our mutual point of view there are however, a number of serious weaknesses. Firstly, it is removed from the immediate area that concerns us by both time and space. Secondly, it intervenes only after the actual coming into being of a dispute. The only consideration in the Canadian Plan for the **prevention** of disputes lies in Article IX, Section 1(d) of that same Plan wherein the generalized hope is expressed that "all participating Employer Associations shall encourage inclusion of work assignment training in all supervisory training programs". It is agreed by both parties that it is necessary to attempt to prevent disputes, insofar as is possible, through a local jurisdictional assignment plan.

ARTICLE VI

It is agreed that the best avenue of prevention lies in a method of highly skilled, knowledgeable, unbiased and impartial assignment of work. It is projected that an impartial umpire of work assignment, working on the primary level of assignment, is the best hope of attainment of our mutual ideal. The Parties agree that such an Umpire or Umpires will be appointed from time to time by the Board of Trustees of the Alberta Jurisdictional Assignment Plan.

ARTICLE VII

There is agreement by both parties that a local board of **adjudication**, operating on a basis independent of the central Canadian Plan has inherent dangers that are unacceptable to either party. Firstly, such a Board would run contrary to the expressed wishes of large National or International organizations. Secondly, such a Board, working singly here or followed by similar Boards in other political jurisdictions, would have the

ultimate effect of splintering the "work jurisdiction" of all Trades and would hence lead to subsequent complexity of assignment for other than possibly local Contractors. It is understood that the Umpire will closely follow the precedents and decisions of the Canadian Plan, in order that systematic, orderly and unified decisions will take place in Alberta that are not in conflict with the greater jurisdictions of the International Unions or National or International Contractor Associations.

ARTICLE VIII

It is anticipated that while the Umpire will work in the area of assignment, the full recourse of all organizations to the centralized adjudication under the Canadian Plan and its related Appeals Board will remain open to all parties in accordance with the Procedural Rules of those bodies.

The chief area of concern is the willingness of the Canadian Plan to accept the assignment by the Umpire as the "specific" or "initial" assignment within the meaning of the Procedural Rules of the Board.

It is not anticipated that the Umpire should be recognized as a Local Board of Adjudication as outlined in Article VIII of the Canadian Plan, nor is it the intention that the Umpire be the equivalent of such a Board.

ARTICLE IX

It is understood by both parties that within the construction industry in Alberta there are unions having no access or obligation to the Canadian Plan for settlement of jurisdictional disputes, nor do they have bilateral trade agreements that are "attested" or registered in the Green Book.

It is understood that the Umpire will give due consideration to local agreements involving these organizations (or their momentary opponents in a given dispute) that do not have recourse to the Canadian Plan, or the international appeal board.

ARTICLE X

There shall be a Jurisdictional Assignment Plan Appeal Board ("J. A. Plan Appeal Board") constituted and authorized pursuant to the Procedural Rules.

ARTICLE XI

It is agreed that the Umpire will give due consideration to existing bilateral or multilateral jurisdictional agreements that are unattested and which exist either on a Local or International level, providing always that such agreement cannot be considered as definitive in a dispute where there is another organization involved who is not party to the agreement.

When national, provincial, or local agreements regarding jurisdiction between National or International Unions have been negotiated, immediate notice of such agreements shall be given to the appropriate management groups. Prior consultation with such groups regarding the making of agreements between National or International Unions is desirable and should be carried on.

ARTICLE XII

The Umpire must maintain on the highest and most unimpeachable level of conduct so as to retain the confidence of all parties. It is anticipated that if the office is maintained on the above level that a fundamental respect will be generated for his decisions. While not all parties will be satisfied with a particular decision there should be a growing recognition that the decision has been reached in accordance with the best standards of judgment. The Alberta Arbitration Act shall not apply to any proceedings hereunder.

ARTICLE XIII

There is an agreement dated the 10th day of November, A.D. 1994 to establish an Alberta Jurisdictional Assignment Plan Trust Fund. The Board of Trustees appointed pursuant to that Agreement shall be the "Joint Administrative Committee". The Joint Administrative Committee shall have the authority to make procedural rules and such other rules and regulations as may be necessary to carry out the purposes and objects of this Plan.

ARTICLE XIV

Both the principal parties to this Memorandum will, upon ratification, institute a standing Joint Administrative Committee.

Such Committee shall act as Trustees in accordance with the trust deed.

SIGNED this 15th day of August, 1995.

**COORDINATING COMMITTEE OF REGISTERED EMPLOYERS'
ORGANIZATIONS**

“Jim Petterson”
Chairman

“R. Neil Tidsbury”
President & Secretary

**THE ALBERTA & N.W.T. (DISTRICT OF MACKENZIE) BUILDING AND
CONSTRUCTION TRADES COUNCIL**

“R. R. Blakely”
President

“Carlos M. Catarino”
First Vice President

“Brad Bulloch”
Second Vice President

“Roy Finley”
Secretary Treasurer

**As Revised and Issued following decisions at the
November 30, 1998 and July 10th, 2000 meetings of the Administrative Committee
As Further Revised and Issued following the
April 17th, 2001 vote of the Administrative Committee
As Further Revised and Issued following the
May 1st, 2003 vote of the Administrative Committee
As Further Revised and Issued following the
January 6th, 2004 vote of the Administrative Committee
As Further Revised and Issued following the
March 15th, 2005 vote of the Administrative Committee**

PROCEDURAL RULES

of the

Jurisdictional Assignment Plan

of the

Alberta Construction Industry

adopted pursuant to the Memorandum of Understanding between the Coordinating Committee of Registered Employers Organizations (the “Coordinating Committee”) and the Alberta & N.W.T. (District of MacKenzie) Building and Construction Trades Council (the “Council”) (which may be referred to collectively as the “Parties”), *and including “Plan Amendment No. 1”, adopted by the Board of Trustees 03/10/96, and “Plan Amendments No. 2”, adopted by the Board of Trustees 02/12/97, and confirmed by resolution November 30, 1998, “Plan Amendments No. 3”, adopted by the Board of Trustees 10/07/2000, “Plan Amendments No. 4”, adopted by the Board of Trustees 17/04/2001, “Plan Amendments No. 5”, adopted by the Board of Trustees 01/05/2003, “Plan Amendments No. 6”, adopted by the Board of Trustees 06/01/2004 and “Plan Amendments No. 7”, adopted by the Board of Trustees 15/03/2005.*

Article I: EFFECTIVE DATE

These Procedural Rules shall take effect on the date prescribed in the Regulation made by the Minister pursuant to section 202 of the Alberta Labour Relations Code.

Article II: DEFINITIONS

As used herein, and in the Memorandum of Understanding:

“Administrator” - is responsible for all procedural matters and all information will be processed through the Administrator. The Administrator shall be appointed from time to time by the Joint Administrative Committee.

"Agreements between Unions" - There are various types of Agreements - Agreements of Record, and other National, Provincial, and local Agreements. These Agreements are not binding on other Unions not signatory to the Agreements and, insofar as the Canadian Plan is concerned, they do not affect the claims or rights of work jurisdiction of Unions not party to the Agreement.

"Agreements of Record" - are those Agreements between Building Trades Unions which have been recorded with the Canadian Plan and are binding on the signatory Unions. These are the only Agreements contained in the "Green Book". Agreements of Record are applicable only to the parties signatory to such agreements.

"Canadian Plan" - means the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry covering the U.S. and Canada (As amended through June 1998), or its successor.

"Decision of Umpire" - means the decision of work assignment made by the Umpire.

"Decisions of Record" - Decisions of Record are those which appear in the publication commonly referred to as the "Green Book" published and approved by the Building and Construction Trades Department, AFL-CIO, (current issue), and are international or national in scope. They are applicable to all Unions even though a dispute which resulted in a Decision of Record may originally have involved only two Unions.

They are not to be confused with job decisions rendered by the Canadian Plan which apply only to the SPECIFIC JOBS and Unions named in the job decisions. However, the Canadian Plan is required to give due consideration to Decisions of Record in arriving at job decisions.

Decisions of Record in the "Green Book" do not appear in chronological order and are always referred to by dates.

"Intended Work Assignment" - means the initial step wherein the Contractor declares his intention to assign certain work to a certain Union(s).

"Joint Administrative Committee" - means that committee, also known as the "Board of Trustees", which is to be appointed under the Memorandum of Understanding.

"J. A. Plan Appeal Board"- means the board which is established under these Rules, for the purpose of hearing appeals of assignments by the Umpire.

"Jurisdictional Dispute" - means a dispute between Unions and/or Unions and a Contractor over the assignment of work, or a difference between two or more Unions as to which trade or which workmen will do certain work.

"Participating Contractor" - means a Contractor (Employer) to whom a collective agreement as is referred to section 2(1) of the Regulation applies.

"Participating Union" - means a Building Trades Union as defined in section 1(c) of the Regulation.

"Prevailing Practice" - Prevailing Practice is the practice of that Union which submits valid evidence indicating that its members have performed more of the work in the area where the dispute exists than have members of other Unions. Evidence from contractors which employ all of the trades involved in the dispute will be preferred.

The area, for the purpose of determining the Prevailing Practice, shall be defined ordinarily to mean the geographical jurisdiction of the Alberta & N.W.T. (District of MacKenzie) Building and Construction Trades Council.

"Specific Work Assignment" - means the assignment of work as determined by the Umpire.

The "intended work assignment" shall be considered the specific work assignment where the assignment remains unchallenged before the Umpire.

"Umpire" - means the person or persons appointed hereunder from time to time to act in that capacity.

"Work Stoppage" - means a cessation of work or refusal to work or a refusal to continue work in combination or in concert or in accordance with a common understanding for the purpose of compelling an Employer to assign work or to change an assignment of work.

Article III: ADMINISTRATION AND UMPIRE

1. There shall be appointed an Umpire or Umpires for Alberta. The Umpire shall be appointed by the Joint Administrative Committee. An Umpire shall hold office for a term of two (2) years, at the completion of which may be renewed for a further terms(s) at the discretion of the Joint Administrative Committee.
2. The Umpire shall, upon application through the Administrator by either party to this Agreement or a participating Contractor or a participating Union, decide all questions and matters relating to jurisdiction of work assignments affecting the participating unions including but not limited to:
 - (a) A dispute as to the assignment of work prior to commencement.
 - (b) A dispute as to work in progress.
 - (c) The handling and installation of new products.
 - (d) The presence of a bargaining relationship between a Contractor and a Union(s) claiming the work

The Umpire shall be independent of the parties and impartial as between the parties. He shall treat the parties equally and fairly. The Umpire shall provide full opportunity for all parties affected by work in dispute to be heard and to present evidence before rendering a decision. Respecting each application

referring a dispute to him, he shall disclose to all parties affected by the application any circumstances of which the Umpire is aware, or may become aware during any proceedings before him, that may give rise to a reasonable apprehension of bias.

The Umpire shall make his findings and decisions expeditiously. The Administrator shall serve a copy of the findings and decisions on the parties involved in the dispute and shall file a copy of the findings with the Parties.

3. The Umpire will only hear or render a decision on the assignment of disputed work in respect of which the application has been filed before the work has been completed.

Article IV: CONTRACTOR'S RESPONSIBILITY

1. Pending a decision by the Umpire or such settlements as may be arrived at through the office of the Umpire, there shall be no stoppage of work for any reason arising out of any jurisdictional dispute.
2. When a Contractor has made an intended work assignment, it shall continue the intended work assignment without alteration unless otherwise directed by the Umpire or by agreement between the Unions involved.
3. When a Contractor requests a review, it shall file with the Administrator:
 - (i) a notice of compliance that there has been no work stoppage;
 - (ii) a completed form "J. A. Plan Form 1" (Application for Review of Contractor's Intended Work Assignment); and
 - (iii) a cheque, money order, or similar negotiable instrument in the amount of the prescribed filing fee.
4. The Contractor who has the responsibility for the performance and installation shall make an intended work assignment. For instance, if Contractor "A" subcontracts certain work to Contractor "B", then Contractor "B" shall have the responsibility for making the intended work assignment included in his contract. If Contractor "B" in turn shall subcontract certain work to Contractor "C", then Contractor "C" shall have the responsibility for making the intended work assignment for the work included in his contract.

The responsible Contractor shall upon request, and without delay, make an intended work assignment when an element of conflicting interest prevails and upon failing to do so, shall be so directed by the Umpire.

5. The intended work assignment by the Contractor shall be made on the following basis:

- (a) Where a Decision of Record applies to the disputed work, or where an Agreement of Record between the disputing Unions applies to the disputed work, the Contractor shall assign the work in accordance with such Agreement or Decision of Record. Where a local trade agreement between two unions has been filed with the Umpire, the Contractor shall assign the work in accordance with such trade agreement providing such trade agreement does not affect another trade.
 - (b) Where no decision or agreement under (a) applies, the intended work assignment shall be made by the Contractor in accordance with established trade practice and the Prevailing Practice and with due consideration for efficiency, safety, good management, and the presence within the membership of the local union of workers qualified to perform the work, and a desire by all Parties to eliminate excessive allocation of manpower.
 - (c) If a dispute has arisen prior to the intended work assignment where no decision or agreement under (a) applies, or where there is no predominant practice in the Province, the Contractor shall nonetheless make an intended work assignment after consulting the representatives of the contesting Unions and considering any arguments or facts the Unions may wish to present regarding the applicable Decisions or Agreements of Record or Prevailing Practice. The Contractor should also consult any local association of Contractors in the locality regarding the established practice.
6. Should two or more Unions make claim to specific work and for any reason neglect to refer the matter to the Umpire for resolution, then the Contractor responsible for the work assignment may refer the matter to the Umpire through the Administrator for resolution.
7. Should a Contractor be required to make an intended work assignment for specific work as a result of two or more Unions deciding upon a work assignment, the Contractor may protest such an assignment to the Umpire, through the Administrator.
8. A difference between a Contractor and one or more Unions, or between two or more Unions, respecting
- (i) whether a Contractor has made an intended assignment respecting specific work, and/or
 - (ii) whether specific work is being performed in accordance with a Contractor's assignment,
- may be submitted to the Umpire for determination.
9. An application for determination of such matters referred to in 8. above shall be submitted to the Umpire through the Administrator using Application Respecting Questions of Original Assignment ("J. A. Plan Form 4"). The application shall indicate:

- (i) the project,
 - (ii) the party submitting the application,
 - (iii) those Unions and parties affected by the difference,
 - (iv) contact information for all parties,
 - (v) an account of events leading to the difference, and
 - (vi) a full and detailed description of the specific work that is the subject of the difference in sufficient detail that the subject work or activities are obvious to the responding parties.
10. When the Administrator receives an Application Respecting Questions of Original Assignment, the Administrator shall, forthwith, file copies of the Application with the Umpire, and with each of the parties affected by the difference. The Contractor and each responding Union shall file with the Administrator their respective positions in response to the Application within three working days of receipt of a copy of the Application. The Contractor shall indicate in its response a comprehensive description of the specific work that is the subject of the difference, including such technical and contextual information as necessary to convey the nature of the work, the frequency, the purpose, and other characteristics of the work that will assist in distinguishing the work from other similar activities. The Contractor shall detail any assignments made respecting the specific work. The Contractor shall also indicate the date on which the subject work will commence or has commenced, and the expected completion date.
11. Upon receipt of the full particulars in accordance with 10. above, the Umpire shall conduct whatever inquiries as may be necessary to determine the matter, and may use a telephone conference call and facsimile transmission as a hearing option, and shall issue a determination in respect to the difference within three working days. The decision shall include a determination as to the party or parties that shall bear the cost of processing the appeal, in the manner and in accordance with the considerations as are set out in Article VI (1)(m)&(n).
12. A determination by the Umpire pursuant to section 11. above may be appealed in accordance with Article IX and/or Article XI. Notwithstanding the provisions of Article XI, the portion of Article I 2.(b) of the Procedural Rules of the “Canadian Plan” that makes reference to eight hours shall not apply to an appeal of a decision issued pursuant to Article IV 12. or Article IX 4. of this Alberta Plan.

*[Note: The referenced section of the Canadian Plan, Article I 2(b) of the Procedural Rules, is:
“Starting of work by a trade without a specific assignment by an authorized representative of the responsible contractor shall not be considered an original assignment to that trade, provided that the responsible contractor, or his authorized representative, promptly, and, in any event, within eight working hours following the start of the work, takes positive steps to stop further unauthorized performance of the work by that trade.”]*
13. Access to the “Canadian Plan” shall be limited only to appeal of decisions issued through this Alberta Plan.

Article V: UNION'S RESPONSIBILITY

1. There shall be no stoppage of work for any reason arising out of any jurisdictional dispute.
2. When a Contractor has made an intended work assignment, all Unions shall remain at work and process any complaint over a jurisdictional dispute in accordance with the procedures herein established. Any Union which protests that a Contractor has failed to assign work in accordance with the procedures specified above, shall direct its members to remain at work and process the complaint through its officers.
3. When the Union protests a Contractor's intended work assignment it shall file with the Administrator:
 - (i) a notice of compliance that there has been no work stoppage;
 - (ii) a completed Application of Review of a Contractor's Intended Work Assignment ("J. A. Plan Form 1") ; and
 - (iii) a cheque, money order, or similar negotiable instrument in the amount of the prescribed filing fee.
4. A Union may file with the Umpire through the Administrator a protest against the intended work assignment of a Contractor on a particular project. Such protest of assignment shall indicate
 - (i) the project,
 - (ii) the disputing Unions,
 - (iii) those Unions and parties affected by the dispute,
 - (iv) contact information for all parties,
 - (v) an account of events leading to the work assignment, and
 - (vi) a full and detailed description of the work in dispute in sufficient detail that the subject work or activities are obvious to the responding parties.
5. Within five working days of filing the protest, the Union shall provide information, to the best of its ability, respecting the date the subject work started or is intended to start, and the expected completion date. The Union shall also indicate the basis of its protest of the assignment by the Contractor. The Union shall cite any Decision or Agreement of Record on which its protest is based, and provide a copy. When no Decisions or Agreements of Record are applicable, the Union shall cite the basis for its protest of assignment. If the Union is relying on an agreement between Unions or if such an agreement exists, the Union shall provide a copy. If the Union is relying on established trade practice, the Union shall describe the evidence that will be used to demonstrate such practice. If the Union is relying on letters of understanding or other such considerations, the Union shall particularize the basis for the reliance and describe the evidence that will be used. Any Union may also notify the Umpire through the Administrator of a work stoppage engaged in by another Union. Prior to filing a protest, the Union shall advise the Contractor and the Union in possession of the disputed work of its claim for the disputed work and seek to settle the same.

Article VI: PROCEDURES

1. When the Umpire has received, through the Administrator, a protest of work assignment from a Union or a request for a decision from a Contractor, the Umpire shall proceed to make a decision as follows:

- (a) Notice of such a protest when made by a Union shall be promptly sent by the Administrator to the other Union(s) affected by the dispute, and the Union(s) shall be advised of the five working day limit for responding, as set out below.

Within five working days of being advised by the Administrator of the protest, the responding Union or each responding Union shall indicate the basis of its position respecting the assignment by the Contractor. The Union shall cite any Decision or Agreement of Record on which its response is based, and provide a copy. When no Decisions or Agreements of Record are applicable, the Union shall cite the basis for its position. If the Union is relying on an agreement between Unions or if such an agreement exists, the Union shall provide a copy. If the Union is relying on established trade practice, the Union shall describe the evidence that will be used to demonstrate such practice. If the Union is relying on letters of understanding or other such considerations, the Union shall particularize the basis for the reliance and describe the evidence that will be used. The Union may also notify the Umpire through the Administrator of a work stoppage engaged in by another Union.

- (b) Where a protest has been filed with the Administrator by a Union, the affected Contractor shall be promptly notified by the Administrator and shall be requested to furnish a full description of the disputed work within five working days. The Contractor shall provide a comprehensive description of the work, including such technical and contextual information as necessary to convey the nature of the work, the frequency, the purpose, and other characteristics of the work that will assist in distinguishing the work from other similar activities. The Contractor shall also indicate the date on which the subject work will commence or has commenced, and the expected completion date.
- (c) Upon receipt of the full particulars from the protesting Union pursuant to Article V(5), the full responses from the responding Union(s) pursuant to Article VI(1)(a), and the Contractor's information pursuant to Article VI(1)(b), the Administrator shall file copies of each with the other affected parties and the Umpire.
- (d) Each party shall, within three working days of receiving the information from the Administrator pursuant to Article VI(1)(c) above, file with the Administrator any rebuttal response and any documents in support of such rebuttal. The Administrator shall promptly forward these submissions to each other affected party and to the Umpire.

- (e) When a Union files a protest and its members remain off the job or hold up disputed work, processing of such protest shall not start until the Union has returned its members to work. Upon notification to the Administrator that the members have returned to work, the Administrator shall issue the parties twenty-four (24) hours' notice that the time limits for processing the protest shall resume.
- (f) Where two Unions have established procedures for the adjustment of jurisdictional disputes without resorting to the procedures set out herein, they shall be allowed a reasonable length of time as determined by the Umpire in which to effect a settlement. If the Unions are unable to reach agreement, they shall jointly render a statement of facts of the dispute to the Umpire for a decision. This subsection shall only apply providing there is no stoppage of work while utilizing this procedure.
- (g) If, during the course of consideration of a dispute, the Umpire should decide that there is a substantial and material question of fact which cannot be resolved on the basis of the available evidence, the Umpire shall temporarily suspend the deliberations and make such investigation as he deems necessary to avail himself of relevant facts and evidence bearing on the dispute.
- (h) If, during the course of consideration of a dispute, any party to the dispute or the Umpire should decide that there is a substantial and material question of technological change attendant to a dispute which cannot be resolved on the basis of available evidence, the Umpire shall temporarily suspend the deliberations and make such investigation as he deems necessary to avail himself of relevant facts and evidence bearing on the dispute and shall in any event make a job decision prior to the scheduled commencement of work.
- (i) The application shall be processed using an oral hearing, unless the parties to a protest of work assignment from a Union or a request for a decision from a Contractor unanimously agree that the application shall be processed without a hearing using written briefs. The oral hearing shall be conducted on the first mutually acceptable date within twenty working days of receipt of the application. In the event a mutually acceptable date can not be set by agreement, the Umpire shall set the date for the hearing within the stipulated twenty days. Prior to any hearing, each party to the proceeding shall advise the Administrator, who in turn will advise the other parties and the Umpire, of the persons that will attend the hearing on behalf of that party, the names of any anticipated witnesses, and the name or names of any persons who will serve as advocate on behalf of that party.
- (j) Subject to Article VI(1)(h), no late documentation shall be accepted unless the Umpire is satisfied that the documentation was not reasonably available, given diligent effort, within the specified time limits.
- (k) In rendering his decision, the Umpire shall determine first whether a previous Decision of Record and/or Agreement of Record governs. If no such Decision or Agreement applies he shall then consider whether there is an applicable agreement between the disputing Unions governing the

case. If no such Agreement is in effect, the Umpire shall consider established trade practice, prevailing practice, together with a reasonable acceptance of considerations for efficiency, safety, good management, and a desire by all Parties to eliminate excessive allocation of manpower. (See the attached Letters of Understanding).

- (l) In addition to all other requirements in these Rules and Regulations with respect to the form of a decision rendered by the Umpire, it is also required that any such decision shall include a brief statement of the description of the work in dispute and the conclusions of the Umpire with respect to the principal material issues which are involved in the dispute. The Umpire's decision shall be in writing and shall be as brief and concise as possible. The Administrator shall serve copies of the decision on all affected parties by facsimile transmission followed by registered mail or courier, and shall file a copy of the decision with each of the Parties.
- (m) The costs of processing an application shall be borne by the “losing” party or parties. The costs shall include the fees and disbursements of the Umpire and of the Administrator (net of the filing fee), specifically associated with the processing of the subject application. The Umpire shall, as part of the decision, make a determination as to the party or parties that shall be responsible for the payment of such costs. Notwithstanding the establishment of the Plan on the basis of “loser pay”, in circumstances in which it is difficult to identify the “loser” or when the payment of the full costs by the “loser” may be unfair in light of all of the issues and circumstances, the Umpire shall have the authority to determine which party or parties shall bear the costs or portions thereof, and accordingly shall include such assignment of the responsibility for the payment of costs in the decision. Decisions in respect of costs may be appealed in accordance with Article IX.
- (n) An affected union that refrains from participating and does not make its position known respecting an application could be considered to be a “losing party” and assessed some or all of the costs of processing the application. An affected union that concurred with the position of the applicant union and made its position known to the parties would not be considered to be a “losing party” in respect to a ruling under the Plan that the applicant should have been awarded the subject work. In such a case, if the applicant and affected unions made their concurrence known to the employer in a timely way, the employer could be considered to be a “losing party” and assessed some or all of the costs of processing the application. Whether the applicant had a bargaining relationship with the subject employer may also have a bearing on whether the employer would be required to bear some or all of the costs. Where an affected union concurred with the position of an applicant union in respect to a decision that went against the applicant union, both may be considered to be “losing parties” for the purposes of assigning costs.
- (o) The affected Unions and Contractors shall promptly comply with each decision of the Umpire.

Article VII: RECONSIDERATION

1. A party to and affected by a decision of an Umpire may, within five working days of receipt of the decision, request reconsideration of the Umpire's decision, in accordance with J. A. Plan Form 2.
2. No party may apply to reconsider a decision unless they have accepted that decision and put it into effect. A decision remains in continuous effect, notwithstanding a request to reconsider, until and unless it is reconsidered and varied.
3. Reconsideration shall only be granted on one or more of the following grounds:
 - (i) new evidence (being evidence that is substantial and that was not reasonably available, given diligent effort, at the time of the initial processing of the application);
 - (ii) accidental mistakes or "slips" on the part of the Umpire;
 - (iii) substantial error of fact or law; and
 - (iv) failure of the Umpire to consider a decision of record or agreement of record put before him.
4. Disagreement with the decision of the Umpire is not a ground for reconsideration.
5. A request for reconsideration shall include clear references to, full particulars of, and any relevant evidence respecting the requisite condition or conditions on which the request relies.
6. An Umpire may issue a corrigendum to a decision correcting accidental mistakes or "slips" but may not otherwise reconsider his decision except upon an application under this section or at the direction of an appeal body or reviewing Court.
7. Upon receipt of a request for reconsideration, the Administrator shall promptly forward copies of the request to all affected parties. All affected parties shall be directed to file with the Administrator, within five days of being notified of the request, their full response to the request, complete with full particulars of and any relevant evidence respecting the matter.
8. A reconsideration request shall be referred to the Umpire that issued the subject decision, subject to the availability of that Umpire without undue delay. The Umpire shall determine the matter of compliance with the decision in question. The Umpire shall then determine whether one or more of the requisite conditions for reconsideration have been met. In the event the Umpire is satisfied that the conditions for reconsideration have been established, the Umpire shall determine whether the decision should be confirmed or varied.

9. The application shall be processed without a hearing using written briefs, unless the parties to a protest of work assignment from a Union or a request for a decision from a Contractor unanimously agree that the application shall be processed using an oral hearing. Any oral hearing shall be conducted, such hearing shall be scheduled on the first mutually acceptable date within twenty working days of receipt of the application. In the event a mutually acceptable date can not be set by agreement, the Umpire shall set the date for the hearing within the stipulated twenty working days.
10. Prior to any hearing, each party to the proceeding shall advise the Administrator, who in turn will advise the other parties and the Umpire, of the persons that will attend the hearing on behalf of that party, the names of any anticipated witnesses, and the name or names of any persons who will serve as an advocate on behalf of that party.
11. Requests for postponement of an oral hearing must be received by the Administrator a minimum of forty-eight (48) hours prior to the date scheduled for the hearing. If a request for postponement is granted by the Umpire, the Administrator will reschedule the hearing, to be held within forty-eight (48) hours.
12. The Umpire's decision shall be in writing and shall be as brief and concise as possible. The Umpire's decision shall include a determination as to the party or parties that shall bear the cost of processing the request for reconsideration, in the manner and in accordance with the considerations as are set out in Article VI (1)(m)&(n). The Administrator shall serve copies of the decision on all affected parties by facsimile transmission followed by registered mail or courier, and shall file a copy of the decision with each of the Parties.
13. The Umpire has the authority to make consequential changes to his original decision, such as reassessing the assignment of costs, provided such variations are properly related to the grounds on which reconsideration was sought.

Article VIII: IMPLEMENTATION OF DECISIONS

1. Decisions as to jurisdictional claims and decisions determining whether or not such decisions have been violated as rendered by the Umpire shall be binding, final and conclusive on all of the parties bound to the operation of this Jurisdictional Assignment Plan of the Alberta Construction Industry.
2. To further implement the decision of the Umpire, any party and any of the members or affiliates and any Contractor may at any time file a complaint in writing in accordance with J. A. Plan Form 4 with the Umpire through the Administrator alleging a violation of a decision previously made. A hearing will be scheduled to be held within three working (3) days of receipt of the complaint with respect to the alleged violation. All interested parties shall be notified by the Administrator of the time and place thereof by phone and / or facsimile transmission. The Umpire shall conduct a hearing at the time and place specified

- in this notice. All parties shall be given an opportunity to testify, and to present documentary evidence relating to the said matter of the hearing within forty-eight (48) hours after the conclusion thereof. The Umpire shall render a written decision in the matter within three working days of the conclusion of the proceedings, and shall state whether or not there has been violation of his prior decision. The decision shall include a determination as to the party or parties that shall bear the cost of processing the application, in the manner and in accordance with the considerations as are set out in Article VI (1)(m)&(n). The Administrator shall send copies of the decision by facsimile transmission followed by a hard copy mailed by registered mail or sent by courier to all parties.
3. Should the Umpire determine that there has been a violation of his decision, he shall order immediate compliance by the offending party or parties.
 4. The Umpire may take the following action to enforce compliance with his decision, including a directive to make a specific assignment of work:
 - (a) He may levy a fine of \$50 to \$2,500 per day for each violation against the offender; i.e. Contractor and/or Union(s). The offender shall pay to the Administrator within fifteen (15) days any sum or sums so levied. Should a member of either party to this Agreement fail to pay the amount levied within fifteen (15) days, he shall be deprived of all benefits of the Umpire until such time as the matter is adjusted to the satisfaction of the Umpire. The Administrator shall hold such funds in trust, in accordance with the instructions of the Joint Administrative Committee.
 - (b) He may take any further or additional action he deems necessary to secure compliance with his decision.
 - (c) In the appropriate case, and in reasonable circumstances, the umpire may relieve against technicality, irregularity or time limits.
 5. Any affected party may, in the event of a failure to comply with a decision or directive of an Umpire, or of any appeal body created by the Procedural Rules, file a copy of the decision or directive with a clerk of the Court of Queen's Bench of Alberta and thereupon the decision or directive is enforceable as a judgment or order of the Court.

Article IX: J. A. PLAN APPEAL BOARD

1. Notwithstanding anything else contained in this agreement, the parties hereto, through the administrative structure, shall establish and appoint a "J. A. Plan Appeal Board" for an eighteen (18) month trial period after which it will be reviewed.
2. While the J. A. Plan Appeal Board is in place, a party may appeal a decision of an Umpire, whether such decision is issued pursuant to Article VI or Article VII. The party seeking to appeal a decision may apply for appeal either to the J. A. Plan Appeal Board pursuant to this Article, through the Administrator, or to the

Canadian Plan pursuant to Article XI. A decision by the J. A. Plan Appeal Board may in turn be appealed pursuant to Article XI. A decision of the Canadian Plan may not be appealed further pursuant to this Plan.

3. The J. A. Plan Appeal Board shall be composed of six (6) members and two (2) chairpersons. The Coordinating Committee of Registered Employers' Organizations and the Alberta & N.W.T. (District of MacKenzie) Building and Construction Trades Council will each appoint three (3) of the members and one (1) of the chairpersons.

An actual appeal shall be heard by a Panel of two (2) members and one (1) chairperson, all of whom shall be "disinterested" in the particular dispute.

Panel members while serving as such shall be recompensed by a "per diem" as decided by the Joint Administrative Committee of the Plan.

4. The J. A. Plan Appeal Board shall hear appeals of the Umpire's decisions, being "Specific Work Assignments" as defined in Article II, and shall be governed by the following:
 - (a) Any Participating Union affected by the dispute, or a Contractor who was a party to the dispute, may file an application for an appeal hearing on a Specific Work Assignment within five (5) working days of the date on which they receive the Umpire's ruling in respect to a request for reconsideration. Applications shall be sent to the J.A.P. Appeal Board through the office of the Administrator.
 - (b) Applications shall be in writing in accordance with J. A. Plan Form 3, and they must include a description of the work in dispute, a copy of the decision(s) being appealed and a statement of the reasons for the appeal. All supporting documents (i.e. copies of agreements, decisions, letters, etc.) are to be sent to the J. A. Plan Appeal Board through the Administrator along with the application. A cheque in the amount of the filing fee (as established by the Joint Administrative Committee) shall be made out to the Jurisdictional Assignment Plan and sent to the Administrator.
 - (c) The J. A. Plan Appeal Board will not proceed with an appeal if there is a failure by the appellant union to comply with the Specific Work Assignment.
 - (d) Upon the Administrator's receipt of an application for appeal, the Administrator shall promptly forward to the other parties involved in the dispute a copy of the application (including the description of the disputed work and the alleged reasons for appeal).
 - (e) Upon receipt of an application the Administrator will refer the matter to the two chairpersons, and will decide the appropriate chairperson and Panel members in the event the two chairpersons are not able to agree on the appropriate Panel within four (4) working days.

- (f) Upon receipt of a valid application a Panel of the J. A. Plan Appeal Board shall consider the request, especially the reasons for it. The J. A. Plan Appeal Board Panel will, within five (5) working days of their appointment in the matter, dismiss those requests which it finds to have no merit. The Panel, when determining whether a request warrants a hearing, may make such inquiries as it considers necessary. If the Panel concludes that the request appears to warrant further consideration, the Administrator will, within ten (10) working days of their appointment in the matter, set a date, time and place for a hearing. All parties shall be notified. Prior to any hearing, each party to the proceeding shall advise the Administrator, who in turn will advise the other parties and the Panel, of the persons that will attend the hearing on behalf of that party, the names of any anticipated witnesses, and the name or names of any persons who will serve as advocate on behalf of that party.
- (g) The Administrator will obtain from the Umpire and forward to the Panel of the J.A. Plan Appeal Board the exhibits and argument placed before the Umpire in the matter under appeal and on any request to reconsider the decision in that matter.
- (h) The J.A. Plan Appeal Board Panel will consider only the matters raised in the application for appeal and any reply thereto. The J.A. Plan Appeal Board panel will render its decision based on the matters placed before the Umpire as disclosed by the exhibits and argument produced by the Umpire. The J.A. Plan Appeal Board may receive additional evidence only in the following circumstances:
 - (a) To establish what evidence was before the Umpire.
 - (b) Where evidence was offered to the Umpire but, in the opinion of the J.A. Appeal Board, wrongfully found inadmissible by the Umpire, or
 - (c) where the evidence could not with proper diligence have been presented to the Umpire in the original hearings or in an application for reconsideration.
- (i) A failure of any party or parties to attend a hearing without good cause, as determined by the Panel, shall not delay the hearing of argument or the issuance of a decision.
- (j) The decision of the J. A. Plan Appeal Board Panel shall indicate the finding of the majority only. The conclusion of individual members of the J. A. Plan Appeal Board Panel shall not be reported.
- (k) The J. A. Plan Appeal Board Panel shall issue its decision within three (3) working days of the date (or the last date, if more than one date was required) of the hearing. The decision of a Panel of the J. A. Plan Appeal Board shall be in writing and shall be as brief and concise as possible. A decision of the J. A. Plan Appeal Board Panel shall be a decision of the J. A. Plan Appeal Board. The decision shall include a determination as to

the party or parties that shall bear the cost of processing the appeal, in the manner and in accordance with the considerations as are set out in Article VI (1)(m)&(n).

- (l) The Administrator shall serve copies of the decision on all affected parties by facsimile transmission followed by registered mail or courier, and shall file a copy of the decision with each of the Parties.
 - (m) Subject to the Procedural Rules and to any rules or procedures established pursuant to Article IX (5), the J. A. Plan Appeal Board Panel may determine its own procedure in respect to a matter referred to it.
5. The J. A. Plan Appeal Board shall establish such other rules and procedures that are required, providing that same are reviewed and approved by the Joint Administrative Committee and are in conformity with the general meaning and intent of this Plan.
 6. The Joint Administrative Committee shall ensure that all constituents of the Plan are provided with, or have access to, the written rules and procedures of the J. A. Plan Appeal Board.

Article X: EXPEDITIOUS PROCESS

1. This section applies to Umpire's proceedings and to proceedings of the J.A. Appeal Board.
2. Proceedings shall be conducted in an informal manner that recognizes the urgent nature of many jurisdictional disputes and the need to provide an expeditious decision in the interests of avoiding work disruption.
3. Umpires and members of the J.A. Plan Appeal Board shall be appointed on the basis of their expertise in the construction industry and are expected to apply that expertise to the matters that are before them.
4. No party may have a lawyer prepare or make a submission, nor may they be assisted by legal counsel in the making of a submission, be it verbal or written, on a matter of trade jurisdiction or any other matters that comes before the Umpire or the J. A. Plan Appeal Board.
5. No party may tape or transcribe the proceedings. Any notes or other recording of the proceeding taken by the Umpire or by members of the J.A. Plan Appeal Board are for their personal use only and shall not be available to the parties or constitute a formal record of the proceedings.

Article XI: RECOURSE

1. Any party or person bound by a decision of the Umpire or of the Appeal Board may appeal that decision by filing an appeal with the Canadian Plan. Such an appeal shall be on the record that was before the Umpire or Appeal Board. A person or party who seeks to appeal to the Canadian Plan shall be bound by its Procedural Rules and Regulations, or those of its successors, so far as may be applicable, and shall be bound by any decision reached by said Plan, or its successor, as fully and effectively as if such decision were a decision of the Umpire. Notwithstanding the foregoing, the Canadian Plan shall, respecting appeals of decisions issued under this Plan, be bound by the Letters of Understanding appended hereto, and by the provisions herein respecting the responsibilities for making intended work assignments, and by the considerations and priorities set out in Article VI(1)(k).
2. Appeals to the Canadian Plan shall be final and binding.
3. Subject to subsection (4), no award or proceeding of an arbitrator, umpire or other body acting under the Alberta Plan or, on appeal therefrom, the Canadian Plan, shall be questioned or reviewed in any court by application for judicial review or otherwise, and no order shall be made or process entered into or proceedings taken in any court, whether by way of injunction, declaratory judgment, prohibition, quo warranto or otherwise, to question, review, prohibit or restrain the arbitrator, umpire or other body in any of their proceedings.
4. A decision, order, directive, declaration, ruling or proceeding of an arbitrator, umpire or other body, from which there is no appeal, may be questioned or reviewed by way of an application for judicial review seeking an order in the nature of certiorari or mandamus if the originating notice is filed with the Court no later than 30 days after the date of the proceeding, decision, order, directive, declaration or ruling or reasons in respect of it, whichever is the later.

LETTER OF UNDERSTANDING

between

Coordinating Committee of Registered Employer Organizations
(the "Coordinating Committee")
representing the respective Registered Employers' Organizations

and the

Alberta & N.W.T. (District of MacKenzie) Building and Construction Trades Council
(the "Council")
representing the Local Unions Affiliated with the Council

Whereas the Coordinating Committee and the Council, representing respectively, the Registered Employers' Organizations and the Local Unions in the general construction sector, have entered into a Memorandum of Understanding establishing a Jurisdictional Assignment Plan for the Construction Industry in Alberta; and

Whereas it is the intention of the Parties to provide effective processes and machinery for the assignment of work and the resolution of differences respecting the assignment of work; and

Whereas the Procedural Rules provide for the Umpire to decide, on application, questions respecting the presence of a bargaining relationship between a Participating Contractor and a Participating Union(s) claiming work,

Now Therefore It Is Agreed between the Parties and those they respectively represent that, in the event the Umpire determines that a Participating Union does not have a bargaining relationship with a Participating Contractor who has responsibility for making an intended assignment of work claimed by that Participating Union then the Umpire shall make an appraisal of the nature of the work, its likely duration, the amount of work, the nature of the business of the participating Contractor, how the Participating Contractor may have carried out such work in the past, the likelihood of there being a change in the business of the Participating Contractor, that portion of the construction industry in which the Participating Contractor does business (i.e. Residential, Commercial/Institutional, or Industrial), and any other factor(s) that the Umpire may deem relevant. In such cases the Umpire, having reference to the factors above, may, or may not, determine it appropriate to award work to a Participating Union notwithstanding the absence of a bargaining relationship.

In any event a decision of the Umpire shall not have the effect of either extending to that Participating Contractor subcontracting restrictions that are not included in a collective agreement that is binding upon that Participating Contractor or extending to that Participating Contractor any hiring obligations that are not included in a collective agreement that is binding upon that Participating Contractor.

It is also agreed that this Letter of Understanding shall be attached to and form part of the Memorandum of Understanding and the Procedural Rules.

LETTER OF UNDERSTANDING

between

Coordinating Committee of Registered Employer Organizations
(the "Coordinating Committee")
representing the respective Registered Employers' Organizations

and the

Alberta & N.W.T. (District of MacKenzie) Building and Construction Trades Council
(the "Council")
representing the Local Unions Affiliated with the Council

Whereas the Coordinating Committee and the Council, representing respectively, the Registered Employers' Organizations and the Local Unions in the general construction sector, have entered into a Memorandum of Understanding establishing a Jurisdictional Assignment Plan for the Construction Industry in Alberta; and

Whereas it is the intention of the Parties to insure that assignments of work do not create inefficiencies that would render Union Contractors noncompetitive with non-union contractors in bidding for work,

And Whereas it is the intention of the Parties to preserve and maintain the integrity of the craft jurisdiction of those organizations affiliated with the Alberta & N.W.T. (District of MacKenzie) Building and Construction Trades Council and the Building and Construction Trades Department AFL-CIO,

Now Therefore It Is Agreed between the Parties and those they respectively represent that, decisions of the Umpire shall not, wherever possible, result in an excessive allocation of manpower occurring on the job. For the purpose of the Plan, the term "excessive allocation of manpower" shall include situations where a decision of the Umpire would result in a requirement to add more workers on the job site than would ordinarily be required in order to complete the work efficiently. Such situations could include the operation or use of certain equipment or tools which are commonly referred to as "tools of the trade" and which may be competently used by a variety of crafts in carrying out work. The term "excessive allocation of manpower" may also refer to work that is the work of a specific craft but which is of either such short duration or is so infrequent on a periodic basis to render assignment of such work to that craft uneconomic. In such situations the Umpire shall have a discretion in making awards that will allow for a common sense resolve to such situations while maintaining the integrity of the specific Union's jurisdiction.

It is also agreed that this Letter of Understanding shall be attached to and form part of the Memorandum of Understanding and Procedural Rules establishing a Jurisdictional Assignment Plan for the Construction Industry in Alberta.

SIGNED this 15th day of August, 1995.

**COORDINATING COMMITTEE OF REGISTERED EMPLOYERS'
ORGANIZATIONS**

“Jim Petterson”

Jim Petterson,
Chairman

“Neil Tidsbury”

R. Neil Tidsbury
Secretary

**THE ALBERTA & N.W.T. (DISTRICT OF MACKENZIE) BUILDING AND
CONSTRUCTION TRADES COUNCIL**

“R. R. Blakely”

Robert Blakely,
President

“Carlos M. Catarino”

Carlos M. Catarino,
First Vice President

“Brad Bulloch”

Brad Bulloch,
Second Vice President

“Roy Finley”

Roy Finley,
Secretary Treasurer

