

Partnership Agreement

Associated Builders and Contractors, Inc. –

Indiana Chapter

and the

Indiana Department of Labor

June 1, 2011



I. Introduction and Objective

The Indiana Department of Labor (IDOL) and the Associated Builders and Contractors, Inc. – Indiana Chapter (ABC) mutually recognize the importance of providing a safe and healthful work environment for employees of Indiana’s construction workforce.

To advance our mutual goal of preventing accidents, we strongly agree on the need to develop a working relationship among the IDOL and ABC and their members, which fosters mutual trust and respect for each organization’s role in the construction safety process. To achieve this goal, IDOL and ABC agree that a statewide partnership charter would be beneficial for those contractors with demonstrated exemplary safety and health programs that routinely perform construction activities on a statewide basis.

We are committed to working as partners to achieve construction workplace safety through the following shared strategies and objectives:

1. Implement a continuing and open communication policy between IDOL and the ABC in a manner that encourages respect and understanding.
2. Share knowledge of the best industry technology, innovations and work practices that improve jobsite safety and health performance.
3. Cooperate in the development and continuous improvement of safety training programs for the construction industry and the IDOL personnel.
4. Promote recognition for construction safety excellence at every opportunity.
5. Ensure that enforcement policies and practices are effective, consistent and fair.
6. Promote principles of good faith and fair dealings as the foundation of our relationship.
7. Recognize that either party to the partnership may withdraw from the agreement at any time submitting written notification of intent to the other partner.

II. Background and Goals

The IDOL and ABC recognize the need to develop a working relationship that creates mutual trust and respect for the respective roles of each organization in the construction safety process. This partnership is an example of these two organizations working together to improve occupational safety and health in the Indiana construction community.

The Goals of the partnership include:

- Annual reduction in the composite rate of injuries and illnesses with an emphasis on reducing injuries resulting from those hazards that are the four leading causes of death on construction site: Falls, Struck-by, Caught in-between and Electrocutions. This will be measured through use of participants’ Total Case Incident Rate (TCIR), Days Away Restriction and Transfer (DART) rate and the number of days associated with each element of the DART rate. Each participants’ TCIR and DART rates shall be determined by the type of principal type of work generally performed by the participant.

- Increase the number of ABC members who implement effective safety and health programs such as the STEP Diamond and Platinum and provide effective safety and health training for management, supervisors and employees. Demonstration of an effective safety program will be determined by their involvement in any one or combination of safety awards program of ABC, and ABC's related regional and national association.
- Conduct a semi-annual meeting with the participants to discuss and determine best practices based on participant experiences. The best practices will be shared by ABC with its members.
- Annually increase the number of participants in the partnership.
- Recognize the achievements of those contractors with exemplary safety and health programs and effective site-specific safety and health plans by acknowledging them as an IDOL/ABC partner, which includes, but is not limited to, recognition at the ABC annual membership meeting and a signed certificate.
- IDOL staff and ABC staff members have provided input in the partnership agreement and will be consulted regularly for feedback to improve the partnership and its goals.
- Allow IDOL to focus resources on companies that have not demonstrated implementation of effective safety programs

III. Associated Builders and Contractor's Commitment/Role

The ABC will administer this partnership program as outlined herein, and will serve as the principle safety resource in support of ABC members. To fulfill the partnership, the ABC also will:

- A. Act as a liaison for ABC members with the IDOL as appropriate. Members will be able to call ABC with questions and ABC will contact IDOL for responses.
- B. Offer ongoing, quality training on topics of importance for members, specifically the focused areas of falls, struck-by, caught in/between and electrocutions.
- C. Provide up-to-date informational materials and brochures to ABC members.
- D. Organize and provide the IDOL's interpretations of major standards, as well as statewide inspection issues including the most frequently cited IOSHA standards.
- E. Ensure that written safety and health policies and programs for "STEP Diamond and Platinum" members include an emphasis on employer/employee responsibilities. This may include, but is not limited to, specific safety talks. An ABC Safety Training Evaluation Process (STEP) Diamond or Platinum Member within this program is defined as an ABC member that meets and satisfies all terms and obligations of the Participating Member Firm's Commitment as set forth by Section V hereof.
- F. Promote construction safety excellence through the annual ABC Safety Recognition Program.
- G. Administer the overall partnership program, including, but not limited to, the initial evaluation of the partnership applications to determine whether the contractor meets the criteria specified within the partnership initiative. Information to be considered by ABC will include pertinent company information

as referenced in Section V (demonstrated safety and health program, training commitments, OSHA citations history, fatalities, injury/illness experience and similar factors).

- H. Notify INSafe on a regular and recurring basis (not less frequently than the 15th of each month) with the name(s) of contractors that have met the partnership criteria and have been enrolled in the program and applications will be reviewed annually. All applicants will have their safety program audited by ABC representatives before they are certified or recertified and they will be audited at least every three years thereafter. Additionally, a participant who has certification in the IDOL/Metro Indianapolis Coalition for Construction Safety (MICCS) partnership, and who has been audited within the previous three years shall be exempt from the ABC audit. IDOL and ABC, Inc., Indiana Chapter, will accept a current and valid MICCS certification in lieu of an ABC audit.
- I. Conduct an annual evaluation to determine the impact and effectiveness of this partnership with IDOL.
- J. If necessary, terminate participating "STEP Diamond or Platinum" members from the partnership, if findings indicate that the participant is not fulfilling its obligation under the partnership or has provided falsified documentation.

IV. Indiana Department of Labor's Commitment/Role

Upon acceptance into the ABC partnership program, IDOL will provide the following incentives to participants. "STEP Diamond or Platinum" members are companies whose achievements in the area of worksite safety are outstanding, as defined herein. Acceptance into this partnership will require additional validating of a safety and health program effectively through a comprehensive on-site qualifying inspection by an outside source. The qualifying inspection will be conducted on at least one active job site by the independent consulting firm.

- A. IDOL will exempt all "STEP Diamond and Platinum" members from scheduled general schedule inspections and will not issue citations to companies for non-serious violations that are fixed immediately and in the presence of the compliance officer.
- B. Participants will receive unprogrammed inspections only in response to reports of imminent danger, fatalities/catastrophes, "plain view" violations or conditions or in the case of a signed, formal complaint.
- C. Non-formal Complaints will be handled through the phone/fax process, if the complainant agrees.
- D. During IDOL inspections of non-participating employers, contractors or subcontractors who are participating in this partnership will not be included in the inspection unless the inspector observes that, as a result of the partnership contractor's actions, any employees are exposed to hazards such as, but not limited to falls, electrical hazards, caught in/between hazards or struck by hazards.
- E. For inspections resulting from formal complaints, violations in plain view and/or Programmed Inspections, the inspection will be limited to the complaint item(s) and "in plain view" items.

- F. During inspections, if potential violations are found (i.e. where employees are not exposed to the hazard) IDOL may review the employer's records and provide limited on-site training as needed, so long as noted or observed hazards are abated immediately or prior to exposure by any employee.
- G. Planned Programmed Inspections (Emphasis Inspections)
- "STEP Diamond and Platinum" members will not be subjected to programmed inspections where verification has been conducted and completed in the past 12 months.
 - *Observed Violations*—Any violations observed by IDOL personnel while in the area of the project will be brought to the attention of the Safety Director/Coordinator of the respective "STEP Diamond or Platinum" members and may not necessarily be cited if the violation is corrected in an immediate manner. IDOL shall contact the Safety Director/Coordinator of the respective "STEP Diamond or Platinum" member who will initiate next working day. Any recognized violation that is not corrected will be cited per normal IDOL citation policies.
 - *Follow-up Inspections*—If citations are issued by IDOL on any inspection conducted, IDOL may conduct a follow-up inspection to verify abatement.
 - *Non-ABC STEP Diamond and Platinum Contractors*—Employers who elect not to participate or who are determined by INSafe to be outside the aforementioned criteria for inclusion under this partnership agreement, will be subject to traditional IDOL inspections and enforcement actions. ABC members shall provide to the IDOL a list of any and all non-participating members, with information regarding address, principal contact, etc. IDOL shall provide to ABC a list of any contractors deemed not eligible for participation.

The IDOL and ABC may jointly or independently have the discretion to veto companies from participating in this program. Examples of issues that could disqualify a company from participating include unpaid fines or penalties to the IDOL or unsatisfactory regulatory history with any other State agency or department.

V. Participating Members Firm's Commitment/Role

To take advantage of partnership status, the applicant must be a member of ABC and must be accepted into the ABC's "STEP Diamond or Platinum" and:

- A. Certify company-wide that no fatalities or catastrophes occurred within the last three years that resulted in serious, and/or knowing citations, related to the incident.
- B. Verify that a comprehensive written safety and health program is in place which is at least equivalent to OSHA's "Safety and Health Program Management Guidelines" of January 26, 1989 in FRN 54:3904-3916, or the American National Standards Institute (ANSI) A-10.38, "Basic Elements of an Employer Program to Provide a Safe and Healthful Work Environment," or the ABC Safety program

- C. Implement a fall protection program where participants require and enforce the use of conventional fall protection (i.e. personal fall arrest systems, safety net systems, restraints or guardrail systems) when their employees or subcontractor employees are performing work covered by 29 CFR 1926.
- D. Submit its OSHA Log 300 Summary for the past three years, and a three-year TCIR and DART Rate for the prior year of at least 20% below a three-year National average, for the NAICS code of the industry in which the participant is classified as determined by the Bureau of Labor Statistics (BLS). *See Attachment A for calculation formula.*
 - 1. An organization's industry specific NAICS code shall be their governing classification as determined by their insurer (Worker's Compensation and General Liability) and submitted on their OSHA 300 Log.
 - 2. SIC codes shall be translated to current NAICS codes.
 - 3. If the BLS does not have TCIR and DART averages (rates) for the specific six (6) digit industry classification, then the rightmost digit(s) of the NAICS code shall be deleted until a summary code with current averages is available.
- E. Have a "Three-Year TCIR" Rate and a "Three-Year DART" Rate, for their Indiana operations, equal to or less than a three-year average published by BLS statistics, Indiana average for the NAICS code of the industry in which the participant is classified. Averages will be established by finding the lowest three year-average from 2005 to present.
- F. Demonstrate that company policy and procedures hold supervisor(s) and employee(s) accountable for following established safety rules and IDOL regulations and standards.
- G. Provide training as follows:
 - a. Provide documentation that all new hires receive adequate safety training before beginning work. Topics for the orientation shall include fall protection, electrical, struck-by, trenching, caught-in/between and personal protective equipment.
 - b. Assure that all supervisor field personnel have completed the OSHA 10-Hour Training Course for the Construction Industry, or for newly hired or assigned supervisory personnel provide completion within thirty (30) days of being placed in supervisor position.
- H. "STEP Diamond and Platinum" members agree to serve as a mentor for contractors on its projects who have yet to attain the same level of recognition within the partnership.

- I. Allow IDOL access to sites for inspections if the contractor has the authority to allow inspections of the site. IDOL will follow the guidelines for inspections as outlined herein.
- J. Participate in a site and/or STEP Verification Audit by an outside, independent source. The audit will include management's commitment and an action plan to prevent future hazards, rather than just identifying current hazards. The IDOL must approve of the selection of the outside auditor. Additionally, a participant who has certification in the IDOL/MICCS partnership, and who has been audited within the previous three years shall be exempt from the ABC audit. IDOL and ABC, Inc., Indiana Chapter, will accept a current and valid MICCS certification in lieu of an ABC audit.
- K. Provide monthly safety-related data or statistics required by ABC including aggregate current OSHA 300 Log and Total Case Incident Rate (TCIR) report for all participating members' Indiana operations. ABC will provide a summary of analysis of pertinent safety related information for review by the IDOL not later than the 15th of each month. The purpose of such summary information is to assist in preparing an annual report necessary for evaluating the merits of the program and making recommendations for continuous improvement.
- L. Develop and maintain a substance abuse program within thirty days of entering the partnership or provide verification of an existing substance abuse program.

VI. Program Confidentiality

Associated Builders and Contractors, Inc. will maintain the confidentiality of information and data submitted by contractors to ABC related to application for consideration and participation in the partnership program.

Aggregate information delivered to the Indiana Department of Labor becomes a Public Record in accordance with the Indiana Access to Public Records Act and should therefore not include Trade Secrets or confidential information.

VII. Employer/Employee Rights

As an integral part of an effective safety and health program, the availability of employees to exercise their rights which are guaranteed under the Occupational Safety and Health Act of 1970 (OSH Act of 1970) and laws of the state of Indiana and regulations such as, but not limited to, the right to file a safety and health complaint, and the right to obtain information pursuant to IDOL requirements, will not be infringed (i.e. access to injury and illness records or medical exposure records).

It is anticipated that routine employee involvement in the day-to-day implementation of worksite safety and health programs will be assured, including employee participation in

employer self-audits, site inspections, job hazard analyses, safety and health program reviews, and near-miss investigations.

Employers retain all rights guaranteed under the OSH Act of 1970 and the laws of the State of Indiana.

VIII. Partnership Evaluation

The partnership will be evaluated annually by IDOL and ABC. Such evaluation will include a comparison of the Participants' TCIR, DART rate and the number of days associated with each element of the DART rate with the latest available construction data, for their respective industry (NAICS specific classifications) for Indiana from the Bureau of Labor Statistics (BLS).

In addition, ABC shall include a report acknowledging injuries incurred by participating contractors relative to falls, struck-by, caught in/between and electrocutions. Such reports alone will not be cause for inspection.

IX. Termination of Agreement

Either party may withdraw from this agreement by providing written notification to the other partner. Termination shall be effective thirty (30) days after the receipt of notification.

Furthermore, an individual contractor electing to participate in this program may withdraw from this agreement by providing written notification to IDOL and ABC. Termination shall be effective upon receipt of such notification.

When a fatal accident or catastrophe occurs on a Partnership site and the Partner receives a serious, willful, or repeat Safety Order as a result of the ensuing inspection, the Partner shall be barred from participation in the partnership or any of its benefits for a period of three (3) years from the date the safety order is issued.

IDOL or ABC may terminate an individual contractor from the partnership program if the contractor fails to meet the qualifications or otherwise violates the terms and conditions of this partnership agreement.

This agreement may not be modified or amended except by the written agreement of both the IDOL and ABC.

All Partnership signatories appear on the page that follows.

This Partnership was originally agreed to on the 1st day of June, 2011, and is now hereby amended as of the 2nd day of August 2012.



Lori A. Torres
Commissioner
Indiana Department of Labor



J.R. Gaylor
President & CEO
Associated Builders and Contractors, Inc.
Indiana Chapter



Jeffrey S. Carter
Deputy Commissioner of IOSHA
Indiana Department of Labor



Michelle L. Ellison
Director of INSafe
Indiana Department of Labor



INDIANA
DEPARTMENT
OF LABOR



Associated Builders
and Contractors, Inc.
Indiana Chapter

Attachment A

Rate Calculations

1. Annual rates are calculated by the formula $(N/EH) \times 200,000$ where:

N=Sum of the number of recordable injuries and illnesses in the year.

For the TCIR, use the total number of injuries plus illnesses.

For the DART rate use the injuries and illnesses result in days away from work, restricted work activity and/or job transfer.

EH=total number of hours worked by all employees in the year.

200,000=equivalent of 100 full-time workers working 40 hours per week, 50 weeks per year.

2. 3-Year TCIR Calculation. To calculate 3-year TCIR, add the number of all Recordable injuries and illnesses for the past 3 years and divide by total hours worked for those years. Multiply result by 200,000.

$$\frac{[\text{Sum of the Number of injuries \& illnesses for 3-year period}] \times 200,0000}{[\text{Total Hours Worked for 3-year period}]}$$

3. 3-year Dart Rate Calculation. To calculate 3-year DART rate, use the same formula as in B, except add the number of all Recordable injuries and illnesses result in days away from work, restricted work activity, and/or job transfer for the past 3 years.

$$\frac{[\text{Sum of the Number of injuries \& illnesses resulting in DART for 3-year period}] \times 200,0000}{[\text{Total Hours Worked for 3-year period}]}$$

4. Rounding Instructions. You must round the rates to the nearest tenth following traditional mathematical rounding rule. For example 5.85 up to 5.9; round 5.84 down to 5.8.