



Performance Coal Company

POST OFFICE BOX 69 * NAOMA, WV 25140 * PHONE 304-854-1761 * FAX 304-854-3530

MEMORANDUM

TO: Stanley Stewart
FROM: Jason Bussey, Human Resource Manager
DATE: 12/14/07
SUBJECT: Enhanced Agreements

As you are aware, Massey has recently offered the Enhanced Wage Agreements to all of its members.

I am proud to be able to extend this offer to you until 12/31/07.

The difference with this is that you will not be eligible for the Christmas bonus and Raymond points previously offered this year. However, you will be eligible for the retention and Christmas bonuses in 2008, 2009 & 2010.

Remember, the agreement asked for a 3-year commitment from you as well as giving you a 3-year commitment from the company. There were wage increases to some of the positions, plus the retention and Christmas bonus. Those bonus programs are not available for those who do sign the agreement after 2007. Also, if you previously signed a electrician or operator agreement through 2008, your rate will go back to the regular rate at the end of that agreement.

This agreement does not effect retirement or if you are injured on or off the job and can not continue employment. At that point, the agreement becomes void.

Please contact me at 304-854-3306 to discuss the agreement or stop by the office and we can discuss it.

**RE: ENHANCED UNDERGROUND HOURLY RATE AGREEMENT
AND COVENANT NOT TO COMPETE**

Dear Stanley Stewart:

We are pleased to offer you the opportunity to enter into an agreement with Performance Coal Company ("the Company"). We are calling this agreement the Enhanced Underground Hourly Rate Agreement and Covenant Not to Compete ("the Agreement"), and it will allow you the opportunity to increase your hourly earnings from January 1, 2008 through December 31, 2010. As the title suggests, this Agreement is only available for underground positions.

After reading over the Agreement below, and consulting with an attorney if you choose to do so, you may accept the Agreement by initialing and dating it in the designated places and signing it at the end. You are under absolutely no obligation to enter into this Agreement and your current at-will employment will not be impacted if you decide not to sign it. However, by signing this Agreement, you acknowledge it to be a binding and enforceable agreement. You further acknowledge that the Company has advised you not to sign this Agreement unless you intend to remain employed with the Company until December 31, 2010.

The Agreement consists of (1) your commitment to work for the Company through December 31, 2010; (2) the Company's commitment as described in Section II to employ you through December 31, 2010; (3) the Company's agreement to provide you with an enhanced hourly rate of pay over and above the Company's standard hourly rate of pay for the position from January 1, 2008 through December 31, 2010; (4) your agreement to repay the Company any and all additional wages earned as a result of the higher wage rate paid to you under the terms of this Agreement if you quit or are terminated for reasons described in Section II of this Agreement prior to December 31, 2010; and (5) your agreement to abide by a one-year non-competition clause that will come into effect if you quit or are terminated for reasons described in Section II of this Agreement prior to December 31, 2010.

I. YOU AGREE TO WORK FOR THE COMPANY UNTIL DECEMBER 31, 2010

Pursuant to this Agreement, you agree to work for the Company for a continuous period beginning on January 1, 2008 through December 31, 2010.

Initials: _____ Date: _____

**II. THE COMPANY AGREES TO EMPLOY YOU AS DESCRIBED BELOW
UNTIL DECEMBER 31, 2010**

Under this Agreement, the Company will agree to employ you from January 1, 2008 through December 31, 2010. However, the Company reserves the right to terminate your

employment for lack of performance as determined by management, unacceptable conduct, including, but not limited to, unacceptable work and absenteeism, or a serious safety infraction, thereby removing you from participation in this Agreement. Additionally, for the reasons set forth above and in lieu of termination, the Company may remove you from this Agreement and assign you to another position at the Company, or to another Massey-affiliated company.

The Company reserves the right to choose your underground position and/or work location. If you are assigned to another underground position or location before December 31, 2010, you will receive the enhanced rate of pay for the new position if it is higher than your rate of pay under this Agreement. Additionally, if you are assigned to a new location, this Agreement will automatically be assigned to the new location.

Before December 31, 2010, if you request to be assigned to a different underground position and the Company reassigns you to that position, you will receive the enhanced rate of pay for the reassigned position.

Initials: _____ Date: _____

III. THE COMPANY WILL PAY YOU A HIGHER HOURLY RATE THROUGH DECEMBER 31, 2010

Under this Agreement, the Company will provide you with an enhanced hourly rate of pay over and above the Company's standard hourly rate of pay for your position from January 1, 2008 through December 31, 2010. You understand and acknowledge that the Company is agreeing to pay you the enhanced rate of pay because of its need to have a stable workforce and your commitment to work for the Company through December 31, 2010.

Initials: _____ Date: _____

IV. YOU WILL REPAY THE COMPANY ANY AND ALL ADDITIONAL WAGES EARNED AS A RESULT OF THE HIGHER WAGE RATE PAID TO YOU FOR EACH HOUR WORKED UNDER THIS AGREEMENT IF YOU QUIT OR ARE TERMINATED FOR REASONS DESCRIBED IN SECTION II OF THIS AGREEMENT BEFORE DECEMBER 31, 2010

The Company is paying you the enhanced rate of pay because you have committed to work for the Company from January 1, 2008 through December 31, 2010. You acknowledge that the Company will be harmed if you do not satisfy your obligation to work for the Company for this period of time. Therefore, if you quit your job with the Company or are terminated for reasons described in Section II of the Agreement prior to December 31, 2010, you agree that you will repay the Company any and all

additional wages earned as a result of the enhanced wage rate paid to you under the Agreement.

Accordingly, by signing below, you agree to repay the Company any and all amounts due and owing, as set forth above, as a result of quitting employment or being terminated for reasons described in Section II of this Agreement prior to December 31, 2010. You also agree to execute, at the end of each calendar year a Wage Assignment, in the form attached as Exhibit A, in order to ensure compliance with your repayment obligation if your employment ends before December 31, 2010. Furthermore, in the event your Wage Assignments are not sufficient to cover your repayment obligations, you agree to submit payment for the remainder of the obligation within ten (10) days of your last day of employment with the Company. That payment must be made by money order or certified check payable to the Company, and must be delivered to Human Resources, P O Box 497, Sylvester, WV 25193.

Initials: _____ Date: _____

V. YOU AGREE THAT IF YOU DO NOT REMAIN EMPLOYED WITH THE COMPANY UNTIL DECEMBER 31, 2010 YOU WILL NOT COMPETE WITH THE COMPANY WITHIN A NINETY (90) MILE RADIUS FROM YOUR PERFORMANCE COAL COMPANY WORK LOCATION FOR A PERIOD OF ONE YEAR AFTER YOUR EMPLOYMENT WITH PERFORMANCE COAL COMPANY ENDS.

In the event that you quit your employment with the Company or are terminated for reasons described in Section II of the Agreement prior to December 31, 2010, you agree not to compete or attempt to compete with the Company for one year within a ninety (90) mile radius of your work location with the Company. Competition would include not only your direct competition with the Company, but also accepting employment from any coal mining or coal processing company within the ninety (90) mile radius.

You also agree that, in exchange for your promise not to compete in this regard, the Company has provided you with the following consideration: (1) the Company's commitment as described in Section II to employ you until December 31, 2010; (2) the Company's payment to you, during the term of this Agreement, of a higher hourly rate than it would otherwise provide; (3) the specialized and unique training you receive as a Company employee; and (4) the use of the Company's confidential and proprietary information regarding the Company's practices and policies, including, but not limited to, its S-1, P-2, and M-3 policies.

You further agree that, within the one-year time period and the ninety (90) mile radius, the Company would be unfairly and irreparably harmed by your use of (1) the specialized and unique training you receive as a Company employee and (2) the Company's confidential and proprietary information regarding the Company's practices and policies,

including, but not limited to, its S-1, P-2, and M-3 policies, in competition with the Company. Moreover, you agree that this non-competition provision is necessary for the protection of these legitimate business interests.

You recognize that if you breach this non-competition provision, the Company's business will suffer irreparable harm and that remedies at law will be inadequate. You agree that in case of any breach or threatened breach of this non-competition clause, the Company is entitled to immediate injunctive relief or a decree of specific performance of this non-competition clause, in addition to any other remedies provided by law and without being required to prove irreparable harm or special damages.

Initials: _____ Date: _____

VI. THIS AGREEMENT SUPERSEDES ALL OTHER AGREEMENTS ENTERED INTO WITH ANY MASSEY-AFFILIATED COMPANY

This Agreement supersedes any other agreement you have previously entered into with the Company, or any other Massey-affiliated company. However, if you are a participant in a 3-3-3 Underground/Highwall Hourly Electrician Program you are still eligible for the bonus set forth in the Program and your entitlement to the bonus will be determined by the provisions of that agreement

Initials: _____ Date: _____

VII. GENERAL

If any provision of this Agreement is determined to be invalid or unenforceable, that determination shall not make any other provisions of this Agreement invalid or unenforceable, and this Agreement shall, if reasonable, be construed and performed as if the provision that is determined to be invalid or unenforceable had never been included in the Agreement.

Initials: _____ Date: _____

BY SIGNING BELOW, I ACKNOWLEDGE THAT I AM AWARE THAT I AM UNDER NO OBLIGATION TO ENTER INTO THIS AGREEMENT, THAT I HAVE CAREFULLY READ THE AGREEMENT, THAT I UNDERSTAND IT AND THAT I HAVE BEEN GIVEN THE OPPORTUNITY TO TALK TO AN ATTORNEY OF MY OWN CHOOSING BEFORE SIGNING THE AGREEMENT. I UNDERSTAND THAT, AS OF THE DATE I SIGN THE AGREEMENT, I WILL HAVE THE RIGHT TO CHANGE MY MIND AND REVOKE THE AGREEMENT WITHIN A TEN (10) DAY TIME PERIOD. IF I DECIDE TO REVOKE THE AGREEMENT WITHIN THAT TIME PERIOD, I MUST DO SO IN WRITING TO H.R., P. O. BOX 497, SYLVESTER, WV 25193.

AGREED AND ACCEPTED:

Member

[MEMBER NAME]

STATE OF _____,

COUNTY OF _____, To-wit:

The foregoing instrument was acknowledged before me this day of _____, 200__, by _____.

My commission expires: _____

Notary Public

Company

By: _____

Its: _____
(Title)

STATE OF _____,

COUNTY OF _____, To-wit:

The foregoing instrument was acknowledged before me this day of _____, 200__, by _____.

My commission expires: _____

Notary Public

EXHIBIT A

WAGE ASSIGNMENT

STATE OF WEST VIRGINIA,

COUNTY OF _____,

I, _____, hereby assign to Performance Coal Company future wages due me from Performance Coal Company in the total amount of One Thousand Dollars and no Cents (\$1000.00). I UNDERSTAND THAT THIS AMOUNT WILL BECOME DUE ONLY IN THE EVENT I QUIT OR MY EMPLOYMENT IS TERMINATED AS DESCRIBED IN THE ENHANCED HOURLY RATE AGREEMENT AND COVENANT NOT TO COMPETE EXECUTED BY ME. The amount shall be deducted from my final paycheck from the Company. Three-fourths of my earnings for my final pay period, less deductions, shall be exempt from this wage assignment. This assignment replaces the Wage Assignment executed by me on _____ and that assignment is revoked. This assignment shall be effective for a period of one year, or until I sign a replacement Wage Assignment and revoke this one, whichever is later.

[MEMBER]

Taken, sworn to and subscribed before me this _____ day of _____, 200__.

My commission expires: _____.

NOTARY PUBLIC

Accepted by Performance Coal Company on this the _____ day of _____,
200__.

Performance Coal Company

By _____

Its _____

Taken, sworn to and subscribed before me this _____ day of
_____, 200__.

My commission expires: _____.

NOTARY PUBLIC