

AGREEMENT AND DECLARATION OF TRUST
FOR THE
OPERATING ENGINEERS' WORKERS' COMPENSATION TRUST FUND

This Agreement and Declaration of Trust is entered into between Southern California Contractors Association, Inc. (Association); and International Union of Operating Engineers, Local Union No. 12 (Union).

ARTICLE 1. REASONS FOR AGREEMENT

1.1. The Union and Association have entered into Collective Bargaining Agreements which provide, among other things, for the improvement of the quality and delivery of Workers' Compensation benefits to injured employees and the creation of a safety group established pursuant to a Joint Labor-Management Committee which will establish a written safety program designed to decrease the severity and incidence of work-related injuries suffered by employees.

1.2. The Union and Association desire to effectuate the benefits set forth in the Collective Bargaining Agreements and recognize that the creation of a Trust pursuant to 29 U.S.C. 186 is the appropriate vehicle for that purpose.

ARTICLE 2. DEFINITIONS

As used in this Trust Agreement, the following words shall have the following meanings:

2.1 Collective Bargaining Agreements means (a) the Southern California Master Labor Agreements negotiated between the Associations and the Union which provide for the making of contributions to the Operating Engineers' Workers' Compensation Trust Fund and

(b) any other Collective Bargaining Agreements between the Union and any employers or associations of employers which provide for the making of contributions to the Trust Fund (subject to the approval of the Trustees) and (c) any extensions, amendments, modifications or renewal of any Collective Bargaining Agreements, or any substitute or successor agreements which provide for such contributions.

2.2 Committee means the Trustees when acting as the Joint Labor-Management Committee in forming a written group safety plan.

2.3 Employees means all employees of an employer on whose behalf contributions to the Trust Fund are required as a result of the employees' performance of or receipt of payment for, one or more hours of employment pursuant to any of the Collective Bargaining Agreements.

2.4 Employer means a person or entity who employs one or more employees and who contributes or assumes an obligation to contribute to the Trust.

2.5 Employer Association or Associations means the above-named multi-employer Associations party to this Trust Agreement.

2.6 Fund or Trust means the Trust Fund created and established by this Agreement. The Trust Fund shall include all contributions from employers, interest, income and returns thereon and any other money or property of any kind and character received and held by the Trustees, from any source whatsoever for the use and purposes set forth in this Agreement.

2.7 Plan means the written Group Safety Plan developed by the Committee.

2.8 Trust Agreements means this Agreement and Declaration of Trust, as well as any amendments to the Trust Agreement.

2.9 Trustees means the persons who are selected in accordance with the Trust Agreement and who are fiduciaries whose responsibility it shall be to administer the Trust Fund

and whose responsibility it will be to act as the Committee.

2.10 Union means International Union of operating Engineers, Local Union No. 12.

2.11 Workers' Compensation benefits means the expedited delivery of care and the process of administration under the Addendum to the Agreement.

ARTICLE 3. TRUSTEES

3.1 Administration. The Trust Agreement and Committee shall be administered by a Board of Trustees consisting of six Trustees, three of whom shall be designated "Employer Trustees" and three of whom shall be designated "Union Trustees".

3.2 Appointment of Employer Trustees. The Employer Trustees shall be appointed in writing by the Association, which Association are irrevocably designated by each Employer as his or its attorneys-in-fact for the purpose of appointing and removing Trustees and Successor Trustees.

3.3 Appointment of Union Trustees. The Union Trustees shall be appointed in writing by the Union.

3.4 Initial Trustees. The signatures of the original Trustees appended to the Trust Agreement shall constitute the Trustees' acceptance of office and agreement to act under, and be subject to all the terms and conditions of the Trust Agreement.

3.5 Successor Trustees. Successor Trustees shall sign an acknowledgment of receipt and acceptance of a counterpart of the Trust Agreement, and such signature shall constitute their acceptance of the office and agreement to act under, and be subject to all of the terms and conditions of the Trust Agreement.

3.6 Term of Service as Trustee. Each original Trustee, and each Successor

Trustee, shall serve until that Trustee's death, incapacity, resignation or removal. Any retiring Trustee shall forthwith turn over to the remaining Trustees all records, books, documents, monies and other property in that Trustee's possession owned by the Fund or incident to the administration of the Fund.

3.7. Removal. An Employer Trustee may be removed at will, with or without cause, by the Association. A Union Trustee may be removed at will, with or without cause, by a writing signed by the Union. Failure to attend two successive regularly scheduled meetings of the Fund shall be grounds for removal of a Trustee upon written request of any three Trustees.

3.8. Resignation. A Trustee may resign and become and remain fully discharged from further duty or responsibility hereunder upon giving thirty days' written notice to the remaining Trustees and to the party which shall have appointed or selected such Trustee.

3.9. Vacancies. If a vacancy occurs among the Trustees for any reason, the party by whom such vacancy was originally filled shall forthwith designate a Successor Trustee. Appointment of a Successor Trustee shall be evidenced in the same manner as appointment of an initial Trustee. Any Successor Trustee shall be vested with all rights, powers and duties of a Trustee as if originally named as Trustee. The powers of the remaining Trustees to act shall not be impaired or limited in any way pending the designation of a Successor Trustee to fill any vacancy.

3.10. Procedures of the Association. The procedures through which the Employer Trustees are to be appointed, removed or replaced by the Association are to be determined exclusively by such Association. If such procedures provide for the appointment, removal or replacement of one or more Trustees by a particular Association or group thereof, the Trust Fund shall be advised in writing by the Associations as to which of the Associations has such right as to which Employer Trustee. Should any such particular Association no longer be a

party to the Trust Agreement and to the Collective Bargaining Agreements, then the remaining Associations shall advise the Fund in writing which of the remaining Associations then has such right as to which Trustee.

ARTICLE 4. CREATION OF TRUST FUND

4.1 Name of Trust Fund. There is hereby established the Operating Engineers' Workers' Compensation Trust Fund which shall be used solely for the purposes set forth in this Agreement and Declaration of Trust. The Trustees shall at all times receive and hold all assets of the Trust as Trustees solely for the purposes set forth in this Declaration of Trust.

4.2. Purposes of Trust Fund. This Trust is established for the sole and exclusive benefit of employees, pursuant to 29 U.S.C. 186, in order to provide benefits contained within the Collective Bargaining Agreement which benefit employees, their families and dependents improving delivery of benefits and for treatment of injuries and illnesses resulting from occupational activity and by assuring creation and implementation of safety training programs which will decrease the incidence and severity of occupational injuries which interrupt the earning capacity of employees. It is not contemplated or intended that any portion of this Fund shall be utilized to pay or reduce the liabilities of an insurer from whom an Employer purchases a policy of Workers' Compensation insurance or the liability of any Employer caused by the failure of an Employer to purchase a policy of Workers' Compensation insurance. It is further not intended or contemplated that any portion of this Trust Fund shall be used to provide retirement pay, pensions, annuities, unemployment benefits, or to increase any monetary workers' compensation benefits provided for under the laws of the State of California.

4.3. Nature of Fund. The Fund shall consist of all contributions required hereunder to be made for the establishment and maintenance of the Workers' Compensation

