

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

benefits set forth in the Collective Bargaining Agreement to be provided by this Fund.

4.4. Expenditures. The Trustees shall use the assets of the Fund solely for the payment of expenses for the Workers' Compensation administrative benefits contained within the Collective Bargaining Agreement, the establishment of the Plan and for the reasonable and necessary costs of administration of the Fund all of which shall be for the sole and exclusive benefit of the employees.

4.5. Location. The Fund shall have its principal office in the County of Los Angeles, State of California.

4.6. Vesting. The Trustees shall have the continuing supervision, control and direction of the Fund for the uses, purposes and duties set forth in the Trust Agreement and shall be vested with all right, title and interest to it. The Trustees may hold title to the property in the name of the Fund or in the name of a Corporate Co-Trustee or its nominee and may delegate to a Corporate Co-Trustee such other powers as the Trustees in their discretion deem appropriate.

4.7. No reversions. No portion of the Fund's assets shall at any time revert to, or be recoverable by, any of the Associations, any Employer, or the Union, or be used for, or diverted to, purposes other than those set forth in the Trust Agreement and the refund of erroneous, payments.

4.8. No Guarantors. Neither the Association, any Employer, the Union, nor any officer, employee, agent or member of any of them, shall be liable or otherwise responsible for any debts, liabilities or obligations of the Fund or the Trustees, nor shall the Trustees be personally liable for the debts, liabilities or obligations of the Fund.

## ARTICLE 5. ADMINISTRATION.

5.1. General Powers. The Trustees shall have the power to administer the

Fund, having and performing all powers and duties reasonably necessary or appropriate to maintain and operate the Fund in such a way as to accomplish its objectives.

5.2. Enumerated Powers. Without limitation of any powers set forth elsewhere in the Trust Agreement, the Trustees shall be empowered to do the following in the name of the Fund.

- a. Invest the assets of the Fund in such investments as they may in their sole discretion select.
- b. Sell, exchange, lease, convey, or otherwise dispose of any assets as they may in their sole discretion select, and execute and deliver any documents in connection with such transactions.
- c. Appoint a bank to act as Co-Trustee for all or part of the assets of the Fund, which shall receive and hold the assets which the Trustees authorize, and which shall dispose of the assets as the Trustees direct.
- d. Enter into contracts to carry out the terms of the Trust Agreement.
- e. Institute, compromise, settle, litigate, or withdraw claims or actions brought to carry out the purposes of the Fund, as in their sole discretion they deem advisable; provided, however, that this clause shall not excuse any violation of any of the Collective Bargaining Agreements.
- f. Borrow such money in such amounts and on such terms as in their sole discretion they deem advisable to carry out the purposes of the Fund.
- g. Lease or purchase premises, supplies, or equipment.
- h. Hire, discharge, or retain and pay such employees or independent contractors as in their sole discretion they deem advisable to carry out the purposes of the Fund.
- i. Maintain a bank account or accounts.

j. Construe the Trust Agreement and any other documents which the Trustees adopt; and any construction by the Trustees, adopted in good faith, shall be final and binding upon the Associations, Employers, Employees, and the Union.

k. Delegate any of their ministerial powers or duties to any one or more of the remaining Trustees, or to any agent or employee engaged by the Trustees.

l. Delegate to an investment manager the power to invest and reinvest the assets of the Fund.

m. Coordinate the Fund's administrative activities with the administrative activities of the boards of trustees of other employee benefit plans or trusts established or to be established for building trades employees in California to such extent as may be necessary or desirable to enhance effectiveness, minimize costs, or eliminate unnecessary bookkeeping and other expenses for the Fund.

n. Enter into merger agreements with trustees of similar funds in California and provide for the merger of other funds into the Fund.

o. Perform any other act not specifically enumerated, which is reasonably necessary or appropriate to carry out the purposes of the Fund.

5.3. Providing Benefit. In order to provide the Workers' Compensation benefits to Employees contained within the Collective Bargaining Agreements, and as defined herein, the Trustees shall take the following actions.

a. Retain as an employee of the Fund or an independent contractor to the fund at least one ombudsman. The ombudsman shall assist employees in securing Workers' Compensation benefits in accord with the Collective Bargaining Agreement.

b. Retain as independent contractors, mediators and arbiters who shall resolve disputes related to claims for Workers' Compensation benefits in accord with the



provisions set forth in the Collective Bargaining Agreement.

c. Retain a Fund Manager which entity or individual shall arrange for mediations and arbitrations as set forth in the Collective Bargaining Agreement and shall maintain the records of arbitration proceedings as set forth in the Collective Bargaining Agreement.

d. Pay all costs ancillary to the mediation and arbitration procedures as set forth in the Collective Bargaining Agreement.

e. Maintain and update the written Safety Plan as developed by the Trustees acting as the Committee.

5.4. Compensation. The Trustees, other than the Co-Trustee, shall not receive compensation for any of their services.

5.5. Personal Liability. To the extent permitted by law, the Trustees shall not be personally liable for any conduct in which they engage on behalf of the Fund or in their status as the Committee and shall be indemnified for any amounts paid or incurred as a result of any liability.

5.6. Insurance. The Trustees shall purchase and at all times maintain fiduciary liability insurance in amounts sufficient to protect the Fund from liability or loss occurring by reason of the act or omission of a fiduciary. The premiums for such insurance shall be paid out of the assets of the Fund.

5.7. Books of Account. The Trustees shall keep books of the account to be audited annually by a certified public accountant selected by the Trustees.

5.8. Execution of Documents. The Trustees may authorize one Union and one Employer Trustee to execute any documents, or may act by a majority of the Union and a majority of the Employer Trustees actually executing a document.

5.9. Deposits and Withdrawals. All monies received by the Trustees shall be deposited in a bank prior to being used, and all withdrawals shall be made only by a check or withdrawal slip signed by those Trustees authorized by resolution to do so, provided that any resolution shall require the signature of an equal number of Union and Employer Trustees.

5.10. Surety Bond. The Trustees shall secure fidelity and other bonds as may be required or appropriate for each Trustee or other person authorized to receive, handle, deal with or draw upon the monies in the Fund for any purpose whatsoever. Such bonds are to be in such reasonable amounts and to be obtained from such source as the Trustees shall determine. The cost of such bonds shall be paid out of the assets of the Fund.

5.11. Audits. The Trustees or their designee may, at reasonable times and during normal business hours, audit or cause the audit or inspection of any of the books and records of any Employer which the Trustees consider pertinent in connection with contributions and/or reports. If the audit or inspection discloses that the Employer is in default in contributions to the Fund, or if the audit or inspection is made because of the failure of the Employer to submit reports or other books or records as required by the Trustees, the Employer shall, upon demand, pay to the Fund the actual costs of such audit or inspection.

5.12. Collection of Delinquencies and Enforcement of Audit Rights. The Trustees shall have the power in the name of the Fund, in the name of the Corporate Co-Trustee, in their names or otherwise, as in their discretion may be deemed necessary or desirable, to demand and enforce audits and the prompt payment of contributions to the Fund including payments due to the delinquencies as provided in Section 7.4, and to assert and enforce all priorities, lien rights, and other claims or rights with respect to any contributions or payments belonging to the Fund, including the rights to file priority and other claims in bankruptcy. If any Employer refuses to permit an audit or defaults in the making of contributions or payments and if the Trustees consult

or cause to be consulted legal counsel with respect thereto, there shall be added to the obligation of the Employer who is in default, reasonable attorneys' fees, court costs and all other reasonable expenses incurred in connection with such suit or claim, including any and all appellate proceedings therein.

#### ARTICLE 6. MEETINGS AND DECISIONS OF TRUSTEES.

6.1. Officers. Annually, the Trustees shall elect a Chair and Secretary, the Chair being either a Union Trustee or Employer Trustee, and the Secretary being the opposite.

6.2. Meetings. The Trustees shall meet upon call of the Chair or Secretary. To be valid, a meeting may be held no earlier than eight days following the date on which written notice is mailed first class, postage prepaid, to all Trustees or, if notice is given by any other method, five days after written notice is actually received by all Trustees, unless all Trustees consent in writing, which consent may be given before or within ten days after the meeting.

6.3. Action without Meeting. Action may be taken without a meeting by unanimous written consent of all Trustees.

6.4. Quorum. Two of the Union Trustees and two of the Employer Trustees shall constitute a quorum.

6.5. Majority Vote. All action shall be taken by vote of the Trustees. The vote shall be carried by a majority of the Trustees present unless, prior to the vote, one or more Trustees request a unit vote. When a unit vote is requested, the Union Trustees shall have one vote and the Employer Trustees shall have one vote. Each side shall decide how to cast its respective vote by a majority vote of its members present at the meeting. If either side is unable to cast a vote because of a deadlock among its own members, the motion with respect to which the unit vote is sought shall be deemed deadlocked.

6.6. Deadlocks.

a. If the Trustees have a tie vote, an impartial umpire to cast the deciding vote shall be chosen forthwith by the Trustees. If the Trustees cannot agree on an umpire, the Trustees may secure from the American Arbitration Association a list of seven arbitrators. Within 72 hours of receipt of the list, the Chair and the Secretary shall select an umpire from the list by each side alternately striking three names, the party who secured the list to determine the order of striking. The remaining name shall be that of the umpire.

b. Upon the umpire being selected, a meeting of the Trustees shall be held as soon as practicable, which shall be attended by the umpire, who shall hear evidence or arguments presented by either group of Trustees upon the question or resolution upon which the tie vote occurred. The umpire shall as soon as practicable and, in any case, within 14 days after the meeting at which the umpire was present and heard the evidence and arguments, cast a vote by written instrument for or against the question or resolution upon which the tie has occurred. The umpire shall specify in writing the reasons for casting the vote. The umpire shall deliver a copy of the written vote to the Chair and Secretary. The decision of the umpire shall be final and binding.

c. The fees and expenses of selecting an umpire and of the arbitration shall be proper charges against the Trust Fund.

d. No matter in connection with the interpretation or enforcement of any collective bargaining agreement shall be subject to arbitration under this section.

6.7. Minutes. Minutes shall be kept of all meetings.

6.8. Robert's Rules of Order. Robert's Rules of Order shall govern if the Trust Agreement or resolutions of the Trustees do not provide otherwise.

## ARTICLE 7. CONTRIBUTIONS.

7.1. Contributions. The Trustees shall accept contributions paid pursuant to the Collective Bargaining Agreements and may accept contributions from other sources, provided the receipt of contributions from other sources does not alter the deductibility of the Employers contributions. Contributions shall be paid into the Fund in such manner and with such reports as the Trustees may prescribe.

7.2. Contributions Pursuant to a Collective Bargaining Agreement. Each Employer shall contribute to the Fund the amount specified in the Employer's Collective Bargaining Agreement. Contributions to the Fund shall be due commencing on the date specified in each Employer's Collective Bargaining Agreement and shall be payable in the County of Los Angeles, California, in regular monthly installments, except as otherwise provided in the Employer's Collective Bargaining Agreement. Each monthly contribution shall include all payments which have accrued for work performed during the preceding calendar month. However, in lieu of a calendar month an Employer may use a fiscal month commencing and ending with the Employer's payroll period which is closest to the last day of the month. Each monthly contribution shall be accompanied by a report in a form prescribed by the Trustees. Each contribution to the Trust Fund shall be made promptly and in any event on or before the 20th day of the calendar month in which it becomes payable (or such other date as may be expressly established for contributions to the employee fringe benefit trust funds to which the Employer is reporting on the same report form), on which date said contribution if not then paid in full shall be delinquent.

7.3. Nonpayment of Contributions. The failure of an Employer to pay the contributions required hereunder at the times and in the manner required by the Trustees shall constitute a violation of such Employer's obligations hereunder. Nonpayment by an Employer of

any contributions as herein provided shall not relieve any other Employer of its obligation to make payment of its required contributions. The Trustees may take any action necessary to enforce payment of such contributions due hereunder, including exercise of the right to sue such Employer in a court of competent jurisdiction; and the delinquent Employer shall be liable to the Fund for all expenses of collection thereof, including actual attorneys' fees, incurred by the Trustees.

7.4. Damages for Contribution Delinquencies. The regular and prompt filing of Employer reports and the regular and prompt payment of Employer contributions and other amounts owed to the Fund is essential to the maintenance in effect of the Fund, and it would be extremely difficult, if not impracticable, to fix the actual expense and damage to the Fund which would result from the failure of an Employer to make reports and to pay contributions and other amounts in full within the time provided. Therefore, the amount of damages to the Fund resulting from failure to make reports or pay contributions or other amounts within the time specified, shall be deemed to include:

- (i) interest, plus
- (ii) an additional sum equal to the greater of interest or the liquidated damages

provided for herein.

Interest shall accrue on each amount owed by an Employer from the date such payment became due until the date on which such payment and all attendant interest and liquidated damages are actually received by the Fund. The rate of interest shall equal the per annum rate of interest established by the Federal Reserve Board of San Francisco on advances to member banks under Sections 13 and 13(a) of the Federal Reserve Act prevailing on the 25th day of the month preceding the date on which such contribution or payments became delinquent plus 5% per annum. Liquidated damages shall equal the greater of \$25.00 or 20% of the amount with respect

to which such damages are assessed. These amounts shall become due and payable to the Fund as interest and as liquidated damages and not as a penalty, commencing with the day immediately following the date on which the report or the contribution or contributions became due. Liquidated damages shall be paid for each delinquent report even though a delinquent report shall show no contribution due; and shall be paid in addition to the liquidated damages and interest due on any contributions pertaining to the report. To the extent that damages available to the employee benefit trust funds on the same Employer report pertaining to the delinquency differ from those set forth in this section, the damages available to the Fund for the delinquency in contributions or in reports shall be of the same measure as those available to said employee benefit trust funds. The Trustees, in their discretion, for good cause (and the Trustees shall have the sole right to determine what shall constitute good cause) shall have the right and power to waive all or any part of any sums due to the Fund as interest and liquidated damages.

7.5 Reservation of Rights of Union. Nothing in the Trust Agreement shall be deemed to authorize or prevent economic action by the Union against any Employer who is delinquent in contributions to the Fund. All rights of the Union to refuse to furnish workers to any delinquent Employer, or to withdraw Employees from the job of any such Employer, or to strike or take other economic action against the Employer, shall be determined by the provisions of the Collective Bargaining Agreement and by applicable rules of law.

## ARTICLE 8. ADMISSION OF ADDITIONAL EMPLOYERS

8.1. Acceptance of Additional Employers. California law places substantial restrictions upon which employers may participate in the Workers' Compensation program established in the Collective Bargaining Agreement. Pursuant to California law, only groups of employers who participate in a Joint Labor-Management Safety Committee which has

established a written Safety Plan and which group of employers develops or projects annual Workers' Compensation premiums of Two Million Dollars or more on work covered by the Collective Bargaining Agreement may participate in the Workers' Compensation program established in the Collective Bargaining Agreement. Pursuant to California law, the only individual employers that are not part of such group that may participate in the Workers' Compensation program are individual employers that develop or project annual Workers' Compensation premiums of Two Hundred and Fifty Thousand Dollars or more on work covered by the Collective Bargaining Agreement. Due to the restrictions of California law, the only individual employers that are not represented by the Associations who may become a party to the Trust Agreement are employers that develop or project annual Workers' Compensation premiums of Two Hundred Fifty Thousand Dollars or more on work covered by the Collective Bargaining Agreement and whose Collective Bargaining Agreement requires contributions to this Trust Fund and who executes an acceptance of this Trust Agreement in a form acceptable to the Trustees. Any group of Employers that are not represented by the Associations but who are represented by some other Association and which Employers develop or project annual Workers' Compensation premiums of Two Million Dollars or more on work covered by the Collective Bargaining Agreement may become parties to this Trust Agreement only upon amendment of this Trust Agreement pursuant to which such other Association and its represented, Employers becomes part of the Joint Labor-Management Safety Committee and upon acceptance of this Trust Agreement in a form acceptable to the Trustees. The Trustees, the Associations and the Union shall not unreasonably deny the admission of such an other Association and its represented Employers and shall take all appropriate steps to effectuate such admission.

8.2. Acceptance of Trust Agreement and Contributions to Trust Fund. Any Employer who commences participation pursuant to the foregoing paragraph and who makes one or more



contributions to the Trust Fund with the approval of the Trustees, assumes and shall be bound by all of the obligations imposed by this Trust Agreement upon the Employer, is entitled to all rights under the Trust Agreement and is otherwise subject to it in all respects.

8.3. Condition of Admission. The original Associations and the Union shall at all times have the right and power to select and remove the Trustees and their successors under the Trust Agreement in accord with the terms of Article 3. Any Employer or Union contributing to this Trust Fund after the initial effective date agrees to be bound by this provision.

#### ARTICLE 9. GENERAL PROVISIONS.

9.1. Scope of Charge to Trustees. The duties, responsibilities, liabilities and disabilities of any Trustee under the Trust Agreement shall be determined solely by the express provisions of the Trust Agreement and no further duties, responsibilities, liabilities or disabilities shall be implied or imposed.

9.2. Trustees' Use of Trust Fund Name. The name of the Trust Fund may be used to designate the Trustees collectively and all instruments may be effected by the Trustees in such name.

9.3. Acceptable Means of Notice. Any notice required to be given under the terms of the Trust Agreement shall be deemed to have been duly served if given in writing to the person to be notified (a) by personal delivery to that person, (b) by personal delivery to such person at that person's last known address as shown in the records of the Trust Fund, (c) by wire delivery to such person at said last known address, or (d) by mail to such person at said last known address, provided the notice is sent in a sealed envelope, first class, with all postage prepaid.

9.4. Binding Effect of Trust Agreement. The Trust Agreement shall be binding upon and inure to the benefit of all Employers who are now or hereafter may become represented by

the Associations or party, to the Trust Agreement, subject to the approval of the Trustees, and to the heirs, executors, administrators, successors, purchasers and assigns of the Associations, any Employer, the Union, and the Trustees, subject to the approval of the Trustees.

9.5. Execution by Counterpart. The Trust Agreement may be executed in a number of counterparts, each of which shall have the force and effect of any original, and no more than one counterpart need be signed by any party. Each counterpart shall be filed in the principal office of the Trust Fund.

9.6. Interpretation and Operation in Accordance with Law. All questions pertaining to the Trust Agreement, the Trust Fund and their validity, administration and construction, shall be determined in accordance with the laws of the State of California and with any pertinent laws of the United States.

9.7. Severability. If any provision of the Trust Agreement or any step in the administration of the Trust Fund is held to be illegal or invalid, that shall not affect the remaining portions of the Trust Agreement unless such illegality or invalidity prevents accomplishment of the objectives and purposes of the Trust Agreement. In such event, the parties will immediately commence negotiations to attempt to remedy the defect.

9.8. Acts and Authority of Union. In the execution, amendment and implementation of the Trust Agreement, the Union acts for and on behalf of the Employees and as their collective bargaining representative and agent, and every agreement or act of the Union in connection with the establishment, maintenance and operation of the Trust Fund shall be deemed to be and is the agreement or act of the employees concerned or affected by such agreement or action.

9.9. Acts and Authority of Associations. In the execution, amendment and implementation of the Trust Agreement, the Associations act for and on behalf of the Employers represented by the Associations, and on behalf of any other Employer, person or other entity who

is required by any of the Collective Bargaining Agreements and permitted by this Trust Agreement to make contributions to the Trust Fund or who in fact makes one or more contributions to the Trust Fund; provided such contribution or obligation to make such was favorably approved by the Trustees. Every agreement or act of the Associations in connection with the establishment, maintenance and operation of the Trust Fund shall be deemed to be and is the agreement or act of the Employers, Employer, person or other entity concerned or affected by such agreement or action.

9.10. Tax Deductibility and Qualification. It is the parties' intent that contributions to the Trust Fund shall be at all times tax deductible by the Employers in the taxable year when paid and that the Trust Fund shall be at all times tax exempt. Application for the qualification of the Trust Fund under the Internal Revenue Code shall be made as soon as practicable, and the parties and the Trustees shall do whatever may be necessary to secure such qualification as soon as possible. If any present or future administrative or judicial ruling holds that any provision of the Trust Agreement prevents or defeats the qualification of the Trust Fund or any other objective stated in this section, or if it is necessary or desirable to amend the Trust Agreement to accomplish any such objective, the parties will forthwith enter into negotiations with regard to the amendment of the Trust Agreement in such respects as may be necessary to accomplish such qualification or other objective, consistent with the other objectives and purposes of the Trust Agreement, and any such amendment shall be effective, insofar as practicable, as of the effective date of the Trust Agreement or as of the effective date of any such law or regulation hereafter enacted or adopted, as the case may require.

9.11. Joinder of Parties and Effect of Final Judgments. In any action or proceeding affecting the Trust Fund, it shall be necessary to join as parties only the Trustees, and no Associations, Employers, Union, Employees, or any other person shall be entitled to notice of

any such proceeding or to service of process. Any final judgment entered in any such action or proceeding shall be binding upon all of the above-mentioned parties so long as such judgment does not attempt or purport to impose any personal liability upon or against any party not joined or not served in any such action or proceeding.

9.12. Gender, Plurality and Captions. Words used in the Trust Agreement in the masculine gender shall be construed to be in the feminine or neuter gender where they would apply, and vice versa,; and words in the singular shall be construed to be in the plural where they would, apply, and vice versa. The captions used in the Trust Agreement are for convenience in reference. They shall not be considered in the interpretation and construction of the provisions of the Trust Agreement.

#### ARTICLE 10. AMENDMENT, DURATION AND TERMINATION.

10.1. Amendment by Union and Associations. The Trust Agreement may be amended by mutual agreement of the Associations and the Union subject to the terms and conditions of the Collective Bargaining Agreements and any applicable law or regulations.

10.2. Amendment by Trustees. The Trust Agreement may be amended by the Trustees. Any amendment by the Trustees shall cease to be effective if either the Associations or the Union veto the amendment within 90 days after receiving notice of its adoption. A veto shall be effected by delivery of written notice of the veto to the Trust Fund.

10.3. Notice of Amendments. Whenever an amendment is adopted, a copy shall be distributed to each Trustee, the Associations and the Union.

10.4. Term. Subject to the provisions of this article and Section 9.7, the Trust Fund is irrevocable and the provisions of the Trust Agreement shall continue in effect during the term of the Collective Bargaining Agreements, and any amendments, modifications, renewals, or

extensions thereof with respect to such Collective Bargaining Agreements as provided for the continuation of payments into the Trust Fund or continuance of the Trust Fund.

10.5. Termination. The Trust Agreement and the Trust Fund may be terminated at any time by the Associations and the Union in a writing executed by each, subject to the provisions of Section 4.7. Upon the termination of the Trust Fund, any monies remaining after the payment of all expenses and obligations of the Trust Fund shall be exhausted by application to the following purposes so long as the assets of the Trust Fund will permit after the payment of all expenses of operating and/or winding up the Trust Fund.

a. To pay or provide for the payment of all reasonable and necessary expenses in connection with collecting the Employer contributions and administering the affairs of the Trust Fund, including but without limitation, all expenses which may be incurred in connection with the establishment of the Trust Fund, the providing of fidelity bonds, the employment of administrative, legal, expert and clerical assistance, the purchasing or leasing of such materials, supplies and equipment as the Trustees in their discretion find necessary and appropriate in the performance of their duties.

b. To transfer all remaining assets to a successor fund or other organization which the Trustees shall determine as having purposes substantially identical to those of the Trust Fund.

c. To convert all remaining assets to monies and to refund those monies to the Employees and other parties on whose behalf contributions or donations were made. The order of any such refund shall be in reverse chronological order. Before approving such a disposition, the Trustees shall assess the potential tax consequences and take such steps as may be necessary to minimize the consequences and to provide adequate notice of the consequences to the Employers, Employees and other parties as may be affected.

10.6. Limitation on Term. In no event shall the Trust Fund continue for a longer period

than permitted by law.

Executed at Los Angeles County, California, as of the      day of      , 1999.

EACH OF THOSE SIGNING FOR THE "ASSOCIATION" OR "ASSOCIATIONS" BELOW EXPRESSLY WARRANTS THAT THE SIGNER IS AUTHORIZED TO EXECUTE THIS TRUST AGREEMENT ON BEHALF OF THE ASSOCIATION LISTED OVER THE SIGNER'S SIGNATURE AND WARRANTS THAT ALL OF THE ELIGIBLE MEMBERS OF THAT "ASSOCIATION" ARE PARTIES TO, AND BOUND BY THE TERMS AND PROVISIONS OF THIS TRUST AGREEMENT FOR ITS DURATION AND FURTHER WARRANTS THAT ANY INDIVIDUAL EMPLOYER WHO SHALL BECOME AN ELIGIBLE MEMBER OF THAT "ASSOCIATION" ON OR AFTER THIS DATE AND DURING THE TERM OF THIS TRUST AGREEMENT SHALL AUTOMATICALLY BECOME SUBJECT TO, AND BOUND BY THIS TRUST AGREEMENT DURING ITS TERM.

Association:

SOUTHERN CALIFORNIA CONTRACTORS' ASSOCIATION INC.

By 

Union:

INTERNATIONAL UNION OF OPERATING ENGINEERS,  
LOCAL UNION NO. 12

By 

The undersigned initial Trustees acknowledge that they have read the Trust Agreement, understand it, and agree to act as Trustees under it, to comply with all of its terms and provisions, and to hold the Fund in trust for the uses and purposes set forth in the Trust Agreement.

UNION TRUSTEES

EMPLOYER TRUSTEES

\_\_\_\_\_  
Wm. C. Waggoner

*Mickey J. Adams*  
\_\_\_\_\_  
Mickey J. Adams

*Dale I. Vawter*  
\_\_\_\_\_  
Dale I. Vawter

*Steve Billy*  
\_\_\_\_\_  
Steve Billy

\_\_\_\_\_  
John Spaulding  
*John Spaulding*  
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*John K. Wood*  
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