

**RESTATED  
HOD CARRIERS LOCAL UNION 166  
PENSION TRUST  
TRUST AGREEMENT**

Effective: July 1, 2017

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# **HOD CARRIERS LOCAL 166 PENSION TRUST TRUST AGREEMENT**

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THIS TRUST AGREEMENT (also known as an “Agreement and Declaration of Trust”) previously entered into as of January 1, 1983 (with a prior version dated January 1, 1976) by and between the NORTHERN CALIFORNIA DISTRICT COUNCIL OF LABORERS (previously the HOD CARRIERS LOCAL UNION 166) ,and the NORTHERN CALIFORNIA MASON CONTRACTORS MULTI-EMPLOYER BARGAINING ASSOCIATION and WALL AND CEILING ALLIANCE (“WACA”) (collectively referred to as the “Associations”) is restated effective as of July 1, 2017. The original Agreement included Associations that are no longer in existence and/or are not a party to this Agreement.

## **Recitals**

WHEREAS, the parties hereto are also parties to collective bargaining agreements which provide for payments to the Hod Carriers Local 166 Pension Trust by individual Employers to establish and maintain a Pension Plan for the benefit of Employees covered by such agreements.

WHEREAS, the bargaining parties determined that the Trust Agreement for the Hod Carriers Local 166 Pension Trust should be brought up to date;

WHEREAS, the Board of Trustees agrees with the bargaining parties that the Trust Agreement should be restated in its entirety;

THEREFORE, in consideration of the mutual undertakings of the parties hereto, it is hereby agreed as follows:

## **ARTICLE I NAME AND PURPOSE**

### **Section 1**      **Name**

The official name of the Trust established pursuant to the collective bargaining agreement and this Trust Agreement is the HOD CARRIERS LOCAL 166 PENSION TRUST.

### **Section 2**      **Purposes of Trust Fund**

The primary purpose of this Trust Fund is to provide pension, disability and survivor benefits for former members of Hod Carriers Local 166 (which is now part of the Northern California District Council of Laborers). Such benefits may be provided pursuant to a defined benefit pension plan and a defined contribution plan or more than one of each type of Plan. The Board of Trustees has the discretion and authority to assume responsibility for any other pension plan related to Hod Carriers Local 166. It is acknowledged that the Hod Carriers Local 166 Money Purchase Plan, previously part of this Trust, has merged into the Laborers Annuity Fund for Northern California, and that the Hod Carriers Local 166 South Bay and West Bay Pension Plans have merged into the Hod Carriers Local 166 Pension Plan (known as the East Bay Pension Plan).

The Trust is to consist of Employer contributions, investments and reinvestments thereof, and all earnings, interest and income thereon (minus expenses), and all other contributions and receipts of every kind received by the Trust. The Trust shall pay the necessary costs of administration and continue this

Trust. The Trust shall consist of all assets, property or money held by the Trustees for the uses and purposes of this Trust.

No part of this Fund shall be used for or diverted to purposes other than to provide pensions for the exclusive benefit of Covered Employees and their beneficiaries except for such contributions as may be returned to the Individual Employer as having been made under a mistake of fact or as otherwise permitted by ERISA.

The Trust's purpose shall be accomplished in accordance with all applicable laws, specifically including the Employee Retirement Income Security Act of 1974 (ERISA), as amended. The Trust shall be irrevocable (although it may be terminated as hereafter provided) and no part of its corpus or income shall revert to or inure to the benefit of any contributing employer except for the return of erroneous contributions as provided hereafter.

### **Section 3**      **Effective Date**

This Trust Agreement is restated effective as of July 1, 2017.

## **ARTICLE II USE OF TERMS**

### **Section 1**      **Definitions and Interpretations**

Where the following words and phrases appear in this Trust Agreement they shall have the meaning set forth in this Article, unless the context clearly indicates otherwise. Other words and phrases with special meaning are defined where they first appear unless their meaning is apparent from the context.

A. "Association" means the Northern California Mason Contractors Multi-Employer Bargaining Association ("Mason Contractors") and the Wall and Ceiling Alliance ("WACA"), and their successors and any other Employer Association which may hereafter become signatory hereto.

B. "Beneficiary" means a person designated by a Participant or designated by the terms of a Plan, who is or may become entitled to benefits thereunder.

C. "Benefits" means the pension benefits for Participants and beneficiaries under a Plan or Plans adopted by the Board of Trustees. Benefits are provided under the Hod Carriers Local 166 Pension Plan, a defined benefit pension plan.

D. "Board of Trustees," "Trustees," or "Board" mean the Board of Trustees created by this Agreement. The individual members of the Board are referred to as "Trustees".

E. "Collective Bargaining Agreement" means any agreement, oral or written, express or implied, entered into by the Union with any Employer, as defined in the Labor Management Relations Act of 1947, as amended (29 U.S.C. 141, et seq.) covering wages, rates of pay, hours of labor, or other conditions of employment, or any of them, of employees represented for the purposes of collective bargaining by the Union and which agreement provides for payment by the Individual Employer into the HOD CARRIERS LOCAL 166 PENSION TRUST FUND (hereinafter "Trust Fund"). Employer, as used above in this section, includes any person acting as an agent of an employer, directly or indirectly.

"Collective Bargaining Agreement" means a collective bargaining agreement, subscription agreement or other written agreement entered into by the Union with any eligible Employer or Employer

Association, which provides for employer contributions into this Pension Trust, including any amendment, modification or extension of any such Agreement.

F. "Employee" means (1) any Employee covered by a collective bargaining agreement between the Union and Employer, and on whose behalf an Employer is obligated to make contributions to this Fund; (2) Employees of an Employer who, pursuant to resolution of the Board of Trustees, are included in a Plan and on whose behalf such Employer makes contributions to this Fund on behalf of such Employees on the same basis as are made by Employer parties to collective bargaining agreements; and (3) shall also include Employees of the Union and Apprenticeship Trust which, pursuant to written agreement, extends coverage to its employees, excluding such employees on whose behalf the Union is making contributions to another plan/trust under a collective bargaining agreement.

G. "Employer" or "Contributing Employer" means the signatory associations, any business entity, individual, partnership, corporation or other entity, which is a member of the Association, or any other independent employer which the Board of Trustees agrees may make contributions to the Trust. The term "Employer" or "Eligible Employer" shall also include the Union, the Trust, the Apprenticeship Trust and/or any other Employer who, by written agreement to participate, is authorized by the Board of Trustees to make payment into the Fund on behalf of its Employees, pursuant to a Subscription Agreement.

The Board may condition its approval of a particular employer in such manner as it deems necessary to assure the financial integrity of the Trust and equity among Employers and Participants. Failure of the Board to grant such approval or agree on such conditions shall not be subject to arbitration.

H. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any lawful regulations issued thereunder.

I. "Participant" means a person on whose behalf contributions are properly payable to the Trust and who is or may become eligible to receive benefits pursuant to the requirements of a Plan adopted by the Board of Trustees and as required by ERISA.

J. Plan. This Pension Trust consists of the Hod Carriers Local 166 Pension Plan, also known as the "East Bay Pension Plan". The Hod Carriers Local 166 West Bay Pension Plan and the Hod Carriers Local 166 South Bay Pension Plan have merged into this Plan.

K. "Trust Agreement" means this Agreement and any changes, amendments and modifications hereto.

L. "Trust Fund" or "Fund" mean the Trust Fund established by this Agreement and shall include the entire Trust estate (including the funds and other assets held) which is created and established pursuant to this Agreement. The terms "Fund" and "Pension Fund" shall have the same meaning.

## **Section 2**     **Titles and Headings Not to Control**

The titles to Articles and headings of paragraphs in this Agreement are placed herein for the convenience of reference only and, for any conflict, the text of this Agreement rather than such titles or headings shall control.

### **Section 3**      **Standards of Interpretation**

This Trust Agreement and any Rules and Procedures established hereunder are designed and intended to comply with ERISA, and other applicable law, and construction or interpretation of this Trust Agreement and any Rules and Procedures shall be adopted as is consistent with ERISA and other applicable law. The Board of Trustees is vested with the power to interpret this Trust and any Rules and Procedures and such interpretation, if not in conflict with the plain meaning of this Trust Agreement and any applicable law or regulation, shall be final and conclusive. The Board of Trustees may delegate certain action to the Chair and Co-Chair of the Trust and/or any other Subcommittee established by the Board of Trustees.

If the Board of Trustees determines or is advised that regulations, rulings, or Court action may determine issues or disputes, the Board may defer action for a reasonable period in making a determination hereunder or until such time as the Board can determine what is a proper determination of that issue.

The Board of Trustees has the full discretionary authority to determine eligibility for pension benefits and to construe the terms of the Trust Agreement and any Rules and Procedures and other documents.

## **ARTICLE III TRUST FUND/DELINQUENT CONTRIBUTIONS**

### **Section 1**      **Payment of Employer Contributions**

Each Employer shall make such Employer contributions to the Trust Fund as are required by any applicable collective bargaining agreement. Payments should be accompanied by complete reports on forms furnished and/or approved by the Trust, or as provided in the collective bargaining agreement, so that the contributions can be allocated properly and accurately.

### **Section 2**      **Limitations on Liabilities of Employers**

Except as provided for in this Trust Agreement and in the applicable collective bargaining agreement, no Employer shall be obligated to make any payments into or shall have any liability to the Trust Fund. No Employer guarantees the level of benefits provided hereunder nor are Trustees to be deemed agents of any employer signatory, to a collective bargaining agreement nor is any action by the Board of Trustees to be deemed an action on behalf of any such Employer.

### **Section 3**      **Procedure for Payment of Employer Contributions**

Payments to this Trust Fund shall be due and payable at the place designated by the Board of Trustees and in such installments and at such times as required by this Trust Agreement and/or the applicable collective bargaining agreement. Each payment or installment shall be accompanied by a report in such form as the Board of Trustees, or its delegate, may require.

The payments provided for herein are due and payable on or before the date specified in the collective bargaining agreement, but if not specified, by the fifteenth (15th) day of the current month ("due date"), and are for hours worked in the preceding month.



An Employer may be compelled by the Trust or its assignee by way of subpoena, civil discovery or other legal proceeding, to prepare, submit and file with the Trust proper reports for any period for which the Employer has failed to file. Monthly transmittal reports are due each month even if the Employer has no hours to report (unless the Employer is otherwise advised by the Trust and/or a designated person or entity, such as the third party administrative firm which administers the pension plans).

#### **Section 4**      **Delinquent Contributions**

An Employer shall be considered delinquent if late payment or underpayment occurs because it (a) fails to submit a contribution report with the full contribution postmarked by the due date; or (b) fails to submit contributions on behalf of all Employees for whom contributions are required by the collective bargaining agreement; or (c) fails to properly compute the contributions according to the applicable contributions formula, or (d) otherwise fails to meet its obligations hereunder or under the applicable collective bargaining agreement. The Board Trustees, or other delegate, may, in the event of repeated delinquencies by the same Employer, make special rules applicable to that Employer, including without limitation, advancing the due date, requiring a bond (or greater bond) or other security against future delinquencies, or establishing special fees.

The acceptance and cashing of any checks for contributions, and the disposition of the monies for hours covered thereby in accordance with this Trust Agreement, shall not release or discharge the individual Employer from his or her or its obligations under the collective bargaining agreement for hours worked under said agreement for which no contribution has been received, notwithstanding any statement, restriction or qualification appearing on the check or any attachment thereto.

The Board of Trustees may enter into a Joint Services Agreement(s) or similar arrangement with other related Trust Funds to share in the cost of delinquent contribution legal actions, payroll audits and other administrative efforts (or have a similar arrangement or account in which expenses are shared). The Board has total and absolute discretion to enter into such an arrangement and/or Agreement and may do so for certain delinquencies and audits, and not for others. The Board of Trustees is authorized to delegate to a related entity or other entity the primary responsibility for handling collections, including filing legal actions and approving payroll audits.

#### **Section 5**      **Supervision, Control and Direction of Trust**

The Board of Trustees shall have the continuing supervision, control and direction of the Trust for the uses, purposes and duties set forth in this Trust Agreement and it is vested with all right, title and interest to it. The Trust shall be administered by the Board of Trustees for the exclusive benefit of Participants pursuant to the provision of this Trust.

#### **Section 6**      **Limitation of Rights**

Any Employer, Union, Participant, and/or any other person or entity shall not have any right, title or interest in or to the Trust other than as specifically provided in this Trust Agreement or in the training program. Neither the Trust nor any contributions to the Trust shall be in any manner liable for or subject to the debts, contract or liabilities of any Employer, the Union or any Participant.

#### **Section 7**      **Liability of the Trust**

Any money judgment against the Trust Fund shall be enforceable only against the Trust Fund entity and shall not be enforceable against any Trustee or other person, unless liability against the Trustee or other

person, in his individual capacity, is established in accordance with Section 409(a) of the Employee Retirement Income Security Act of 1974.

## **Section 8**      **Due Date, Liquidated Damages and Related Issues**

The Employer contributions to the Trust must be received by the Trust by the Due Date. The Due Date shall be the fifteenth (15<sup>th</sup>) of the following month in which the hours were performed. An Employer shall be considered delinquent and owe liquidated damages and interest if the contributions are not received or postmarked by the 15<sup>h</sup> of the month.

All parties hereto recognize and agree that prompt and accurate payment of contributions is essential to the operation and administration of the Trust. They further recognize that it will be extremely difficult, if not impossible, to fix the actual damages and expenses to the Trust which will result from the failure of an Employer to make timely contributions. If an Employer does not make timely payments, the Trust loses the investment returns it should have received and incurs additional administrative and legal expenses.

Therefore, a delinquent Employer shall pay the Trust twenty percent (20%) of the principal or twenty dollars (\$20.00), whichever is the greater, as and for liquidated damages and not as a penalty. Employers shall also be required to pay interest (as set forth in Section 9 below) and costs of collection, including without limitation attorneys' fees, accountant fees, collection fees, attachment bonds and court costs. Liquidated damages and other amounts owed may be waived pursuant to rules and regulations adopted by the Board of Trustees or the Board's delegate. The Board of Trustees has the greatest of discretion to waive such damages and amounts if deemed appropriate. When the Board of Trustees has adopted a joint services agreement, it may delegate this power pursuant to that joint services agreement.

If any Individual Employer defaults in the payment of any payments due this fund, in addition to the amount due and the liquidated damages provided for in this section, there shall be added to the obligation of the defaulter all reasonable expenses incurred by this Fund in the collection of the same including but not limited to reasonable attorneys' and accountant fees, private investigators and asset search entities, cost of attachment bonds, court costs and similar types of expenses.

It is recognized that the extent of collection expenses and legal services necessarily incurred in the collection of Employer contributions, including the cost of appellate proceedings, may in some instances have no relation to the fact that the amount of the delinquency is relatively small.

The remedies provided herein are independent of and in addition to other remedies available under this Trust Agreement, the Rules and Procedures, the collective bargaining agreement or applicable law. By way of example, the Board of Trustees is authorized, on its own or through legal counsel or other representative, to file mechanics liens and/or stop notices and/or to file a claim on a contractor's state license bond or any other bond.

## **Section 9**      **Interest**

Delinquent contributions, liquidated damages and other sums owing to the Trust shall accrue interest from the date payable until the date paid at the rate established periodically by the Board of Trustees. If no interest rate has been established, interest shall accrue at a rate of ten (10) percent per year, compounded, unless the Board of Trustees determine that such rate is not reasonable. Any part or all of the interest owed hereunder may be waived at the discretion of the Board of Trustees, the Board's delegate, or pursuant to the rules of any joint services agreement.

## **Section 10**     **Recordkeeping and Audits**

Each Employer shall maintain such time records, checks, check stubs, quarterly or other pertinent government returns, or such other records relating to employment for which contributions are payable hereunder, sufficient (1) to determine whether it has satisfied all obligations to the Trust and (2) to permit the Trust to comply with all applicable laws. These records shall be maintained for a period of not less than seven years following the end of the calendar year in which the employment occurs. If an Employer fails to keep records adequate to determine its obligations, there shall be a rebuttable presumption, at the option of the Trust, that all sums paid by such Employer to Participants, persons covered by the collective bargaining agreement, former members of the Union, or individuals who subsequently become members of the Union were wages for which contributions were required to be made to this Trust.

The Board, or its authorized representatives, may require any Employer to submit to the Board, its auditor or any other representative, any information relevant to the administration of the Trust, and each Employer specifically waives any privilege it may have with respect to such information. Upon notice in writing, an Employer must permit an authorized auditor or other Trust representative to enter upon the premises of such Employer at a mutually agreeable time (within 30 days of such request, unless otherwise agreed) during regular business hours to examine and copy such records as may be necessary to determine whether the Employer is making full and prompt payment of all sums required to the Trust. Such examination may be undertaken pursuant to a routine payroll audit program or on an individual basis. The records to be made available to the Board, or its representative (such as an accounting firm), shall include, but not be limited to:

- Payroll registers or other documents which show wages paid and hours worked by month (preferably) or by week, and or by job.
- Time records and/or cards,
- Payroll journals,
- Check registers,
- Cancelled payroll checks,
- California quarterly payroll tax returns (DE-6's),
- Monthly transmittals to the Trust showing the names reported for benefits,
- Monthly hour summaries or other document(s) used to facilitate accurate reporting,
- Detailed documentation of the job classifications of the employees not reported to the Trust,
- Cash disbursement journals,
- 1099 Forms,
- Monthly transmittals to other Trust Funds,
- Payroll deduction forms,
- Dispatch slips,
- Copies of the Employer's federal, state and local payroll tax reports, and all other documents reflecting the hours and wages of employees (whether or not such documents are privileged).
- Similar records as those listed above for any related company in which any owner is also an officer and/or owner of another company (including any family member) that performs any work in the electrical industry.

If an audit or review of the Employer's records reveals that full and prompt payment of all sums due has not been made, then such Employer shall reimburse the Trust, upon demand of the Board or its delegate, for the costs of said audit in addition to any other obligations it may have hereunder. The Board shall have the authority, however, to waive all or part of such costs if the discrepancy is minor and not willful, or for other good cause shown. This discretion may be assigned pursuant to a joint services agreement.

The Employer's obligations with respect to recordkeeping and audits for the period it is an Employer hereunder shall continue for a period of seven years beyond any date as of which it ceases to be a contributing Employer.

The Board of Trustees has the discretion to charge the Employer for a portion or all of the cost of the audit if excess amounts are owed (as determined by the Board of Trustees) and/or there was lack of cooperation on the part of the Employer and/or taking actions or omissions, which create additional work for the auditor and the Plan.

Any Employer who refuses audit entry shall pay all the legal fees and costs necessary in obtaining the audit of such Employer. If an individual Employer fails or refuses to submit to an audit or confirm an audit appointment, the Trust may file an action to compel audit entry without regard to the grievance and arbitration procedures in the collective bargaining agreement(s) to which the Employer is bound.

The purpose of the audit is to determine how much money is owed to the Trust Fund, if any; the Employer understands that the purpose of the audit would be defeated if he or it were able to limit the audit in any way, including limiting the audit to the Employees he or it defines as Covered Employees. Therefore, the Employer shall not limit the scope of the audit in any fashion, but must make available all of the aforementioned books and records maintained by him or it to the Trust Fund office.

Should an Employer refuse or after a reasonable time fail to comply with the request for an audit, the Board of Trustees, in the Board's sole discretion, may initiate any appropriate legal proceedings to obtain a court order compelling such defaulting Employer to submit to an audit. In such event any and all court costs and fees, including reasonable attorney's fees, incurred by the Trust shall be paid by the Employer.

## **Section 11**     **Collection Actions**

The Trust may institute legal proceedings to collect delinquent Employer contributions, liquidated damages, interest, attorney's fees and/or other costs of collections. Such proceedings may be instituted in the name of the Trust, the Board of Trustees, an individual Trustee and/or the claim may be assigned to a third person for collection. The U.S. District Court for the Northern District of California shall be a proper forum (in addition to other forums proper in accordance with ERISA) in which to institute legal proceedings to collect all sums owing by an Employer. It is understood that the Trust Fund is not required to follow any arbitration provision of any collective bargaining agreement related to delinquent contributions and/or other related losses. The Trust, or its delegate, may also file mechanics liens, stop notices, require joint checks, file claims on bonds and/or take any other action related to the collection of unpaid contributions, liquidated damages and related amounts.

The Employer shall reimburse the Trust, or its assignee, for reasonable attorney's fees, audit fees, court costs, interest, collection agency fees, private investigation fees, cost of attachment bonds and all other reasonable expenses of whatever nature incurred in connection with such suit or claim, including any and all appellate proceedings therein. It is recognized that the extent of legal services necessarily incurred in the collection of required Employer contributions may in certain cases have no relation to the fact that the amount of the delinquency is relatively small.

If the collective bargaining agreement contains provisions relating to collections that specify additional remedies, or obligate the delinquent Employer to greater amounts of liquidated damages, interest, attorney's fees or other items than those set forth herein, the Board of Trustees, at its option, may pursue the additional remedies or impose the greater charges.

## **Section 12**     **Return of Contributions**

Upon a request of an Employer, Employer contributions made to the Trust as a result of mistake of fact or law may (but are not required to) be returned to the Employer within six months after the Board of Trustees or the Board's delegate determines that the contribution was a mistake. Any such return of contributions is at the total and absolute discretion of the Board of Trustees.

If a contribution is made on behalf of a person for whom contributions are not permitted or are not required under the collective bargaining agreement, the Trust's sole obligation with respect thereto shall be to return the erroneous contribution to the extent legally permissible; provided, however, that the Trust shall have the option of retaining any contributions based upon which eligibility has been provided and/or costs incurred by the Trust. Return of such contributions to the Employer is at the total and absolute discretion of the Board of Trustees. No interest is paid on any contributions returned to an Employer.

## **Section 13**     **Employers Cooperate with Board of Trustees**

Whenever requested by the Board of Trustees, an Employer will distribute to all Participants currently in its employ such information as the Board of Trustees deems necessary to carry out its obligations. Such distribution shall be made in such manner as the Board of Trustees may specify. Any Employer that willfully fails to comply with any such reasonable request of the Board shall be liable for any costs that are incurred as a result of such failure as well as any penalties or damages, including court costs and attorneys' fees.

## **Section 14**     **Trust Liability**

Except as expressly provided in this document, neither the Employer(s) nor the Trust Fund shall in any manner be liable for, or subject to, the debts, contracts or liabilities of the Union, any Employee, an Employer or any Trustee (except in his or her capacity as Trustee).

## **Section 15**     **Assignment**

No Employee shall have the right to sell, transfer, anticipate, assign, hypothecate, or otherwise dispose of his or her right to training benefits or any right or interest under the Trust, and the Board of Trustees shall not recognize or be required to recognize any such sale, transfer, anticipation, assignment, hypothecation or other disposition; and such right or interest shall not be subject in any manner to voluntary transfer, or to transfer by operation of law or otherwise, and shall be exempt from the claims of creditors or other claimants and from all orders, decrees, garnishments, executions or other legal or equitable process or proceeding to the fullest extent permissible by law.

# **ARTICLE IV   THE TRUSTEES**

## **Section 1**     **Number of Trustees**

The Trust shall be jointly administered by a Board of Trustees consisting of up to twelve Trustees, six of whom shall be known as "Employer Trustees" and six of whom shall be known as "Union Trustees." There may be fewer than twelve Trustees if agreed to by the bargaining parties without a formal amendment to the Trust Agreement (the bargaining parties' agreement/understanding may be reflected in the Pension Trust meeting minutes) so long as there is equal representation on the Trust.

The Employer Trustees shall be selected by the Associations. The Northern California Mason Contractors Association Multi-Employer Bargaining Association ("Mason Contractors") has three appointments and the Wall and Ceiling Alliance (WACA) has three appointments. The Northern California District Council of Laborers appoints the six Union Trustees. Such appointments shall be made in writing by the appointing party and/or shall be confirmed in the minutes of a Board of Trustees meeting.

## **Section 2**      **Agreement to Serve as Trustee**

The Trustees, and each successor Trustee, shall sign this Trust Agreement (or a copy of such Agreement), an attachment to the Trust Agreement or any other document approved by the Trustees, and such signature shall constitute his or her acceptance of the position and agreement to act under and to be subject to this Trust Agreement and any amendment thereto. Alternatively, the minutes of a Trust meeting may acknowledge the appointment of the Trustee and his or her agreement to be bound by this Trust Agreement.

## **Section 3**      **Successor Trustees**

Successor Union Trustees shall be selected by the Northern California District Council of Laborers. Successor Employer Trustees shall be selected by the two Associations, as applicable. Such selections shall be made by the party which appointed the vacating Trustee within a reasonable period after a vacancy exists, not to exceed ninety days, unless special circumstances exist. If special circumstances exist, an additional reasonable period shall be provided for the appointment to be made. No vacancy or vacancies in a Trustee position shall impair the power of the remaining Trustees acting in the manner herein provided to administer the affairs of the Trust.

## **Section 4**      **Term of Office of Trustees**

Each Trustee shall begin serving at the time specified in the document appointing him or her. If the time is not specified, the individual will begin when he or she signs a written acceptance of his or her appointment or such appointment is acknowledged at a Trust meeting, whichever occurs first. Each Trustee shall serve until his or her death, incapacity, resignation or removal.

No individual who has been convicted of any of the crimes listed in Section 411(a) of the Employee Retirement Income Security Act of 1974 shall serve as a Trustee during the period of disqualification specified in the statute. The appointment of a Trustee shall be automatically terminated if such Trustee is convicted of a crime listed in Section 411(a) of the Employee Retirement Income Security Act of 1974.

## **Section 5**      **Removal of Trustees**

A Trustee may be removed for any reason by a written letter or other notice signed by the appropriate representative of the entity (one of the Associations or the Northern District Council of Laborers) he or she represents certifying that such Trustee has been duly removed.

## **Section 6**      **Resignation of Trustees**

A Trustee may resign upon giving a minimum of thirty (30) days' written notice to the remaining Trustees and to the group he represents in which notice there shall be stated a date when such resignation shall take effect. Such resignation shall take effect on the date specified in the notice or on another alternate date, unless a successor Trustee shall have been selected at an earlier date, in which event such resignation

shall take effect immediately upon the selection of said successor Trustee. The entity appointing the resigning Trustee may establish the effective date of a Trustee resignation (and such date may be earlier or later than the date specified by the Trustee).

#### **Section 7**      **Rights of Successor Trustees**

Any successor Employer Trustee or any successor Union Trustee shall, immediately upon his or her appointment as a successor Trustee and his or her acceptance of being a Trustee, become vested with all the property, rights, powers and duties of a Trustee hereunder with like effect as if originally named as a Trustee, and all the Trustees then in office.

#### **Section 8**      **Duty of Retiring or Removed Trustee**

A Trustee who resigns or is removed shall turn over to the Trust at the principal office of the Trust any and all records, books, documents, monies and other property in his or her possession or under his or her control which belong to the Trust, or which were received by him or her in his or her capacity as Trustee, if so requested by the Board of Trustees. Any such retiring or terminated Trustee agrees to keep in confidence any private and confidential information learned while serving as a Trustee.

#### **Section 9**      **Power of Board in Event of Vacancy**

If one or more Employer Trustees and one or more Union Trustees are serving on the Board, no vacancies in a Trustee position shall impair the power of the remaining Trustees to administer the affairs of the Trust.

If there are no employer Trustees serving on the Board, or no Union Trustees serving on the Board, and if either the Association or the Union fails or refuses to select a successor Trustee who accepts his or her selection, then the remaining Trustees shall have the power to apply to a court of competent jurisdiction to select one or more successors to the Board. Any Trustee selected by the court shall represent the party or group which is unrepresented on the Board, and such successor Trustee shall have all the property, rights, powers and duties of a Trustee duly selected by the party on whose behalf he is selected. Any Trustee so selected shall serve until a successor Trustee shall have accepted his or her selection, or until relieved by the court.

If there are no Employer Trustees or no Union Trustees on the Board, the remaining Trustees shall have the power to take such emergency action as may be necessary for the preservation of Trust assets or for the protection of the interests of the Trust.

#### **Section 10**      **Rules of Procedures**

The Board of Trustees is empowered to adopt such rules of procedure for the conduct of its meetings and determine the time and place of meetings provided such rules and determinations are not in conflict with this Trust Agreement. The Board of Trustees shall also have the discretion to adopt rules and procedures for the administration of the Plan and Trust, as it deems appropriate.

## **ARTICLE V OFFICERS, MEETING, VOTING, DEADLOCKS AND DISPUTES**

### **Section 1 Chairman and Co-Chairman of Board**

The Trustees shall select a Chair and a Co-Chair. When the Chairman selected is an Employer Trustee, the Co-Chair shall be selected from the Union Trustees, and vice versa. The Trustees may select such other officers with such powers as they deem advisable. The term for each office shall be one year, but if there is no replacement, the person shall remain in the position.

If the Chair is absent from a Trust meeting, the Co-Chair shall chair such meeting. If both the Chair and the Co-Chair are absent, the Trustees shall select a person to chair such meeting.

### **Section 2 Time and Place of Meetings**

The Board of Trustees shall determine the time and place of its regular meetings but shall meet at least annually. Written notice of each regular meeting shall be given to all Trustees at least three days prior to the date of such meeting. If a regular meeting date is set and that date is not changed, and it is clear that a meeting was set (and not cancelled or postponed) this additional formal three-day notice is not required. The Board may agree to hold a meeting by conference call or with similar or expanded technology if it so chooses.

### **Section 3 Special Meetings**

Either the Chair or the Co-Chair or any three Trustees may call a special meeting of the Board by giving written notice at least five business days before the date set for such meeting, specifying the time and place of such meeting. Special meetings shall be held at the principal office of the Trust, or at the place specified by the Board for holding its regular meetings, or at such other place as the Trustees may agree upon.

Any notice of meeting shall be sufficient if sent by postpaid, first class mail, personal delivery, or fax, addressed to the Trustee at his or her address shown in the records of the Board, or by e-mail if the Trustee has previously given notice that e-mail is an acceptable form of notice (or that is the standard form of notice that the Trustee receives without objection).

The Board of Trustees has the power to take any action at a special meeting which it might take at a regular meeting, except that the notice of special meeting must specify the matters to be considered at such meeting; in which event, only those matters specified in the notice may be considered or acted upon. Any meeting at which all Trustees are present, or concerning which all Trustees waive notice in writing, shall not be invalid for want of notice.

### **Section 4 Ratification by Trustees/Action Without a Meeting**

Any Trustee may ratify any action taken by other Trustees at any meeting, and such ratification shall have the same effect as the Trustee's vote would have had if it had been cast by him or her in person at the meeting. Any action taken by any number of Trustees at any meeting shall be valid if ratified by all absent Trustees, or, in for a meeting which would have been invalid for want of notice, if ratified by all absent Trustees who were not properly notified. The Board of Trustees may take action without a meeting, provided that each Trustee consents in writing to such action.



## **Section 5**      **Quorum**

To constitute a quorum at any regular or special meeting of the Board, there must be present at least two Employer Trustees (with one present having been appointed by WACA and one present having been appointed by the Mason Contractors) and two Union Trustees. If no quorum is present, the Board of Trustees may meet and transact business; however, the actions taken at such meeting must be approved at a subsequent meeting of the Board of Trustees or otherwise ratified by the Board as provided in this Agreement. Appearing by Telephone is considered to be in attendance for purposes of a quorum.

## **Section 6**      **Voting at a Trust Meeting**

Voting by Trustees shall be by "Unit" Vote. The Union Trustees shall have one vote. And the Employer Trustees shall have one vote. The vote of each side shall be by a majority of the Trustees present on that particular side. Voting on any matter coming before the Board for which a "division of the house" is called for by any Trustee shall be by unit voting. In such event, action by the Board shall require a majority of the Union Trustees and a majority of the Employee Trustees to authorize action.

If any Trustee(s) selected by the Union is absent, the remaining Trustees selected by the Union may vote on behalf of such absent Trustee(s). If any Trustee(s) selected by the Association is absent, the remaining Trustees selected by the Association may vote on behalf of such absent Trustee(s).

## **Section 7**      **Deadlock of Trustees**

If the Employer Trustees and the Union Trustees deadlock on the administration of the Fund or on any matter arising under this Agreement, and one group of Trustees (or any two Trustees) request in writing that the disputed issue be arbitrated, the Employer Trustees and the Union Trustees shall agree upon an impartial umpire to decide such dispute, or upon a mutually satisfactory method for selecting the arbitrator. The request for arbitration should be in writing and is required to be made with ninety days of the date that the deadlocked vote took place. If one group of Trustees votes one way and the other group of Trustees deadlock within its own group, there is still a "deadlock" of all of the Trustees.

A statement of the matter in dispute and to be arbitrated shall be presented in writing to the impartial umpire. If the Board of Trustees cannot agree upon a joint statement presenting said matter to arbitration, each group of Trustees shall prepare and state in writing their version of the dispute and the question or questions involved within five (5) calendar days after said disagreement.

If an impartial arbitrator who is willing to act is not selected within thirty days of a written request for arbitration, either the Union Trustees or the Employer Trustees (or any two Trustees) may petition the United States District Court for the District where the Trust has its principal office to appoint such an umpire. The arbitrator shall have no power to alter, amend, add to, or take away from any of the terms of this Trust Agreement or any collective bargaining agreement. The decision of the impartial umpire shall be final and binding upon the parties and the Participants of the Trust.

The impartial referee shall be bound by all the terms and conditions of this Agreement, and shall have no authority to alter or amend the terms of any of the above. The decision of the impartial referee shall be in writing. No matter in connection with the interpretation or enforcement of the collective bargaining agreement shall be subject to arbitration under this Article.

Any costs and attorneys' fees incurred by the Board in connection with the dispute shall be paid out of the Trust Fund, including any reasonable compensation to such umpire, unless otherwise agreed to by the parties, the Arbitrator or ordered by a Court.

Differences arising as to the interpretation or application of the provisions of this Trust Agreement shall not be subject to the grievance or arbitration procedures established in any collective bargaining agreement or subscription agreement. All such differences shall be resolved by the impartial umpire.

## **Section 8**      **Rules or Procedures**

The Board of Trustees is empowered to adopt such Rules or Procedures for the conduct of its meetings and determine the time and place of meetings. The Board of Trustees shall also have the discretion to adopt rules and procedures for the administration of the Trust, as it deems appropriate, and delegate to the Chair and Co-Chair to make decisions, take action and sign documents between Trust meetings.

# **ARTICLE VI POWERS AND DUTIES OF TRUSTEES**

## **Section 1**      **General Rules/Named Fiduciaries**

The Board of Trustees shall be the "named fiduciary" to the extent required by ERISA. Other persons shall be fiduciaries only to the extent they have discretionary authority or discretionary control respecting management of the Trust; or exercise any authority or control respecting management or disposition of Trust assets; or have any discretionary authority or discretionary responsibility in the administration of the Trust. Any person or group of persons may serve in more than one fiduciary capacity with respect to the Trust.

## **Section 2**      **Powers Granted to Trustees**

The Board of Trustees has the exclusive authority to control and manage the operation and administration of the Trust. The Board of Trustees shall receive and hold all sums of money payable to the Fund and administer and use such money for the purpose of providing pension benefits.

The powers granted to the Trustees herein are in addition to, and not in limitation of, all powers granted to the Trustees by common law, statute, and other provisions of the Trust Agreement; are exercisable from time to time, and are not powers to be considered exhausted by their exercise on one or more occasions; and are exercisable in the sole discretion of the Trustees.

Unless specifically limited by law, the Trustees shall have the power to administer the Trust and to do all acts they consider to be in the best interest of the Trust and the Participants and beneficiaries.

A.      Interpret Trust Agreement. Specifically limit and define the individuals entitled to interpret the provisions of the Trust Agreement and any Plan adopted thereunder.

B.      Establish Plans. To establish such plans of benefits to be provided, the eligibility requirements and any other matters applicable to such Plan.

C.      Administration. To provide for the administration of the Trust and any Plan by delegating administrative functions to an administrative office (such as the Laborers Funds Administrative Office of Northern California, Inc.), or alternatively, the Trustees may engage the services of an administrator and delegate any necessary functions (be self-administered) or to a third party administrator. The duties of the administrator shall be specified in a written agreement with the Trust.

D.      Errors and Omissions/Other Insurance. To purchase on behalf of the Trust, errors and omissions policies to protect the funds of the Trust, and any other type of insurance deemed reasonable

and necessary for the Trust and any Plan of benefits. This includes additional coverage for sub-limits and other riders or policies to provide as much protection to the Trustees as possible. To the extent permitted by law, individual fiduciaries may purchase Rider Coverage on the individual behalf of each to protect against individual recourse and may be reimbursed for such premiums by the entity appointing them as Trustee.

E. Maintain an Office. To establish and maintain an office for the Trust which shall be staffed in such manner as the Trustees deem appropriate. The Trust Administrative Office, personnel and costs may be shared with other Trusts and/or plans to reduce the expenses of the Trust, achieve greater efficiency and/or provide better service to the Participants.

F. Reciprocity Agreements. To enter into reciprocity agreements with the Trustees of other qualified trusts upon terms mutually agreeable, actuarially sound and lawful.

G. Policies and Procedures. To adopt procedures or rules for Trust administration and any adopted Plan which are consistent with the terms and intent of this Agreement and the relevant Plan.

H. Lawsuits. To sue or to be sued on behalf of the Trust and to be the only necessary plaintiff or defendant in any such action.

I. Settle Claims. To accept, compromise, arbitrate or otherwise settle any obligation, liability or claim involving this Trust, including any claim asserted for taxes under present or future law. This includes any matters raised by government agencies, such as the Department of Labor, Internal Revenue Service, California Franchise Tax Board or any similar agency. The Trustees may also enforce or contest any such obligation, liability or claim by appropriate legal proceedings, but they shall not be obliged to do so unless, in their judgment, it is in the best interests of the Trust to do so.

J. Deposits in Financial Institutions. To receive contributions from the Employers and, at the discretion of the Board of Trustees, to deposit such monies in a bank, savings and loan or other financial institution, subject to the supervision of appropriate state or federal authorities. Withdrawals from the

Fund may be made only upon the signature of two Trustees, one of which shall be a Union Trustee's signature and the other an Employer Trustee's signature.

K. Collections/Delinquency. To enforce the payment of contributions to the Trust by employers under the terms of the collective bargaining agreements, by legal action in the names of the Trustees, the Trust or the Training Program, or by any other means they consider appropriate.

L. Procure Insurance. To purchase on behalf of the Trust, errors and omissions policies to protect the funds of the Trust. To the extent permitted by law, Trustees and other fiduciaries may purchase Rider Coverage on their behalf to protect against individual recourse. A Trustee's appointing entity may purchase such insurance for the Trustee. The Trust is also authorized the purchase of any other policy(ies) of insurance deemed appropriate for the Trust, such as liability and property insurance, including any tail insurance for a terminated pension plan.

M. Employ/hire Professionals/Consultants/Staff. To employ such executive, consultant, administrative, clerical, secretarial, bookkeeping, auditing, tax, legal and/or such other persons to assist the Trustees in administering the Training Program, to provide collection and payment services, to render investment or administrative advice, or to perform such other functions as the Trustees consider advisable. Any agreement with such persons or entities may be for any reasonable period. At the Board's discretion, a letter-agreement between the person/entity may be satisfactory.

N. Delegate Investment Management. To delegate an investment firm or association, an investment consultant, or to an insurance company or other financial institution, as fiduciary, the duty of managing the funds and assets of the Trust, including the Investment and reinvestment in such manner and to the extent considered desirable by the Trustees and permitted under the terms of the Trust Agreement and under applicable law. The Board of Trustees is authorized to give full investment authority to the Investment Consultant or to have the Investment Consultant make recommendations to the Board of Trustees.

O. Loan Agreements. To enter into loan, subordination and/or guarantee agreements, which, in the business judgment of the Trustees, are desirable to protect or enhance any investment in which the Trust holds an interest.

P. Reserves. To establish and to accumulate such reserve funds as they deem appropriate in accordance with ERISA and other federal law and any lawful regulations issued thereunder.

Q. Check Writing and Documents. To authorize such persons or entities as they deem appropriate to execute checks drawn on any bank account, or to issue checks bearing facsimile signatures of such persons. Any two Trustees, one an Employer Trustee and one a Union Trustee, may execute any contracts or other legal documents on behalf of the Trust if so authorized by the Board. Instructions or communications shall be similarly executed or may be executed in such other manner as the Board may authorize.

R. Enter into Contracts. To enter into contracts and agreements for carrying out the terms of this Trust and for the administration of the Trust Fund and to do all acts as they, in their discretion, may deem necessary or advisable.

S. Claims and Appeal Procedures. The Trustees shall adopt a claims and appeal procedure that complies with ERISA. No person shall have any legal or equitable right or claim against an Association, the Union, or the Trustees unless the right or claim is specifically provided in the Trust Agreement, as amended from time to time, or any Plan adopted by the Trustees pursuant to this Trust Agreement, or is conferred by affirmative action of the appropriate fiduciaries by authority specifically delegated to them. No interested party may bring an action in any court on any matter arising out of the Plan or this Trust Agreement, the determination of which is otherwise provided for in the Trust Agreement, until the procedure provided in this Trust Agreement or any Plan adopted by the Trustees, shall have been exhausted and a decision made with respect to it.

If any dispute or question arises concerning the beneficiaries to whom any benefits or payments should be paid, or to whom any other assets of the Trust should be delivered, the Trustees may withhold such action or payments until the dispute or question is determined under the appropriate provisions of the Plan or this Trust Agreement. The Trustees may, in the event of competing claims, in their discretion, deposit any sum claimed by the two or more parties in escrow and notify the disputants of the willingness of the Trust to deliver this sum so deposited to whomever should establish a right to the sum through appropriate court action and, in such an event, Trustees shall have no obligation to participate in any litigation between the disputants.

T. Pay Expenses. To spend money for any purpose reasonably necessary to accomplish the purposes of the Trust. This includes paying Trust expenses including without limitation any applicable taxes of any kind, and all kinds levied or assessed under existing or future laws, upon or in respect to the fund or any money, property, or securities forming a part thereof. To the extent necessary, credit cards

may be used to pay expenses. The Board of Trustees may authorize a third party administrator to pay the Plan's expenses between meetings, with the list of expenses to be approved at the next Trust meeting.

By adopting this Trust Agreement, the bargaining parties and the Board of Trustees ratify actions taken and expenses incurred prior to the actual adoption of this Trust Agreement that are consistent with this document. By way of example, prior expenses incurred in a prior period, such as January 2014, and/or actions taken in previous periods, that are consistent with this document but which may not have been explicitly referenced in a prior version of the Trust Agreement are considered appropriate and authorized.

U. Borrow Money. To borrow money to carry out the purpose of this Trust and to pledge, assign or hypothecate any of the Trust assets to secure such loan.

V. Terminate Participation. To decline or terminate the participation of a particular group of individuals if (a) the Union and the Employer fail to provide the Board with a copy of their collective bargaining agreement; or (b) the language of the contribution provisions in the collective bargaining agreement does not meet the requirements, if any, established by the Board; or (c) there are repeated delinquencies or other failures to comply with the terms of the Plan or Trust Agreement with respect to such individual.

W. Property. To own, sell, exchange, lease, convey or otherwise dispose of or to cause to be sold, exchanged, leased, conveyed or otherwise disposed of any property of any kind forming a part of the fund upon such terms as it may deem proper and to execute and deliver or cause to be executed and delivered, any and all instruments of conveyance or transfer in connection therewith.

Z. Investments. To invest and reinvest (or encumber) funds of the Trust in any investments as set forth in Article VII and as permitted by law.

### **Section 3** **Duties of Fiduciaries**

In addition to any fiduciary obligations which may be provided for elsewhere in this Trust Agreement or by law, all fiduciaries shall have the responsibility to perform as follows:

A. Act Prudently. To discharge their duties with the care, prudence and diligence that a prudent person, familiar with such matters and acting in a like capacity and under similar circumstances, would use.

B. Manage Trust for Beneficiaries. To manage the Trust in accordance with the Trust Agreement, and solely in the interests of the Participants and beneficiaries, and for the exclusive purposes of providing benefits to Participants and to their beneficiaries.

C. Maintain Adequate Records. To determine that records are maintained which will provide in sufficient detail the basic information and data necessary to verify, explain, clarify, or check for accuracy any reports required by local, state or federal agencies, for periods of not less than six years after the filing date of such reports, or six years after the date on which such reports would have been filed but for an exemption under applicable law. All bonds shall be in a form or the type and in the amount approved by the Secretary of Labor.

D. File Government Reports. To file all reports required by law with the appropriate government agencies in a timely manner.

E. Complete Periodic Audit. To engage an independent, qualified public accountant, who shall conduct such an examination of any financial statements of the Trust and of other books and records of the Trust as the accountant may consider necessary. Such examination by the public accountant shall be conducted in accordance with generally accepted auditing standards, and shall involve such tests of the books and records of the Trust as are considered necessary by the accountant.

Nothing in the Agreement shall be construed to enlarge the liabilities of the Trustees beyond what is required of them under the Employee Retirement Income Security Act of 1974. The Fund shall exonerate, reimburse, and save harmless the Trustees individually and collectively against any and all liabilities and reasonable expenses arising out of the Trusteeship, save and except as to the individual Trustee or Trustees, only such liabilities and expenses as may arise out of their failure to perform the duties of their Trust as defined in the Act.

#### **Section 4** **Cessation of Contributions**

In the event any signatory employer ceases operations, or ceases to make contributions to this Trust for a period of six (6) consecutive months, the cessation of operations or the failure of such employer to make contributions shall not affect the validity of the Trust or limit the obligations of any other employer.

Any Trustee appointed solely by an employer who ceases operations or ceases for a period of six (6) months to make contributions to the Fund may be deemed ineligible to continue as a member of the Board of Trustees and shall, upon demand by any Trustee, resign from the Board. If he refuses to resign, the remaining Trustees shall remove him or her from the Board.

#### **Section 5** **Prohibited Transactions**

Except as exempted by ERISA Section 408, other ERISA provisions or regulations or court decisions, or unless waived by the Secretary of Labor or by the Secretary of the Treasury, the Board of Trustees shall not cause the Trust to engage in any transaction which constitutes a prohibited transition under ERISA.

Nothing in this section shall be interpreted to prohibit a fiduciary from:

1. Receiving any benefits to which he may be entitled as a Participant or beneficiary of the Trust.
2. Receiving reasonable compensation for services rendered or for the reimbursement of expenses properly and actually incurred in the performance as a fiduciary of the Trust.
3. Serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest.

Notwithstanding this section, pursuant to ERISA, the Plan is authorized to enter into an agreement with a party-in-interest, such as the Union or an Employer Association to provide certain administrative and/or other services for the Plan for reasonable compensation.

#### **Section 6** **Breach of Fiduciary Duty**

Any fiduciary who, while acting as or serving as a fiduciary, breaches any of the responsibilities, obligations or duties imposed upon him or her by the Trust Agreement or by law shall be personally liable to make good to the Trust any losses resulting from such breach, and to restore to the Trust any profits which may have been made through the use of the Trust assets. In addition, such fiduciary shall be

subject to other equitable or remedial relief as the court may deem appropriate, including his or her removal as a fiduciary, and reimbursement to the Trust of attorneys' fees and costs incurred by the Trust as a result of a breach of fiduciary responsibility by a Trustee.

## **Section 7      Allocation of Fiduciary Responsibilities**

Fiduciary responsibilities may be allocated or delegated as follows, so long as the allocation or delegation meets the fiduciary standards set forth above and is evidenced by an appropriate resolution of the Board:

A. Any responsibility to manage or control the Trust assets may be allocated only among the Trustees and any Fund Custodian, except insofar as such responsibility is delegated to an Investment Manager as provided hereafter.

B. Other responsibilities may be allocated or delegated to any person, but any Participant or beneficiary whose claim for benefits is denied shall have the right to have the denial ultimately reviewed by the Board itself except insofar as it may be permissible under ERISA for any other firm or person to make a final decision on review.

## **Section 8      Breach of Co-Fiduciary**

A. The fiduciaries shall jointly manage and control the assets of the Trust, unless the Trust Agreement or the Trustees specifically allocate responsibilities, obligations or duties among the fiduciaries, and each fiduciary shall use reasonable care to prevent a co-fiduciary from committing a breach of a fiduciary responsibility. A fiduciary shall be liable for a breach of fiduciary responsibility of another co-fiduciary in the event:

1. He or she knowingly participates in, or undertakes to conceal, an act or omission of the co-fiduciary, knowing such act or omission is a breach;
2. If, by his or her failure to discharge his or her duties prudently and in accordance with the obligations set forth in this Trust Agreement, he or she has enabled the co-fiduciary to commit the breach; or
3. If he or she has knowledge of a breach by a co-fiduciary and makes no reasonable effort under the circumstances to remedy such breach.

B. In the event the responsibilities of the Trustees are allocated specifically to each of the Trustees or to other fiduciaries, an individual fiduciary shall not be liable for an act or omission of another fiduciary in carrying out such responsibility, except to the extent that the appointing fiduciary failed to use prudence or failed to consider the interests of the Participants or beneficiaries (1) in the appointment of the fiduciary; (2) in the allocation of the responsibility; (3) with respect to the establishment or implementation of the procedures under which the responsibilities were allocated; or (4) in continuing to prevent such allocation or designation.

C. To the extent allowed by law, fiduciaries are not to be liable with respect to a breach of a fiduciary duty if such breach was committed before they became fiduciaries or after they ceased to be fiduciaries.

## **Section 9**      **Fiduciary Insurance**

Nothing in this Article shall preclude:

A.      The Trust from purchasing insurance for its fiduciaries or for itself to cover liabilities or losses occurring by reason of the act or omission of a fiduciary, if such insurance permits recourse by the insured against the fiduciary in the case of the breach of a fiduciary obligation by such fiduciary; or

B.      A fiduciary from purchasing insurance to cover liability under this part from or for his or her own account; or

C.      The Association or the Union from purchasing insurance to cover potential liability of one or more persons who serve in a fiduciary capacity with regard to employee benefits plans.

## **Section 10**      **Persons Prohibited From Being Fiduciaries**

No person who has been convicted of, or who has been imprisoned as a result of his or her conviction of, those crimes set forth in 411 of ERISA shall be permitted to serve as an administrator, fiduciary, officer, Trustee, custodian, counsel, agent or employee of the Trust, or as a consultant to the Trust, to the extent required by ERISA.

## **Section 11**      **Reasonable Agreements**

Nothing herein provided shall be construed to prevent the Board of Trustees from contracting or making reasonable arrangements with a party in interest for services in connection with the administration of the either or both Plans insofar as it is permissible under Section 408(b) or other provisions of ERISA.

The Board of Trustees is authorized to contract or enter into reasonable arrangements with the Union for services necessary for the establishment and operation of the either Pension Plan and related Plans and to compensate it for such reasonable costs and expenses as it may directly incur in the performance of the same and in addition thereto for such pro rata part of its general operating costs and expenses, including payroll rent, telephone, stationery, postage, travel, and related expense not pertaining to the performance of their regular duties as bargaining representatives as the Board of Trustees shall determine to result indirectly from the performance of the services to the Trust Fund; said compensation and reimbursement, however, to be made upon a strictly budgeted basis and to be accounted for periodically by the Union.

## **Section 12**      **Compensation and Expenses**

To the extent approved by the Board, fiduciaries may receive reasonable compensation for services rendered by them. No fiduciary who already receives full-time pay from an Employer or an association of Employers whose employees are Participants in the Plan, or from an employee organization whose members are eligible for benefits shall, however, receive compensation for his or her services except insofar as permitted by ERISA and pertinent Department of Labor Regulations. When meetings are held during times in which a meal is usually provided, the Trust may provide such meals for Trustees and others involved with the Trust.

To the extent authorized by the Board, Trustees may be reimbursed for expenses actually and properly incurred in accordance with the performance of their duties hereunder, or given an appropriate advance against such reimbursement subject to immediate repayment if the advance should exceed the amount to which they are entitled hereunder. Expenses for which reimbursement may be authorized shall include,



without limitation, those incurred in attendance at meetings and other functions of the Board or its committees, or in attendance at institutes, seminars, conferences or workshops relating to matters of common interest to trusts. Union Trustees who are not full-time employees of the Union shall be reimbursed for lost wages and the rate established in the collective bargaining agreement (including benefits). The Trust is authorized to provide advances on expenses anticipated to be incurred by Trustees on Trust business, such as attendance at conferences.

### **Section 13**      **Indemnification**

To the extent permitted by law, it is the intent of the bargaining parties that the Trustees shall incur no liability, either collectively or individually, in acting upon any papers, documents, data or information believed by them to be genuine and accurate and to have been made, executed delivered or assembled by the proper parties. The Trustees may delegate any of their ministerial powers or duties to any of their agents or employees. To the extent permitted by law, it is the intent of the bargaining parties that no Trustee shall incur any liability for simple negligence, oversight or carelessness in connection with the performance of his or her duties as such Trustee. Therefore, to the extent permitted by law, the Trust shall exonerate, reimburse and save harmless the Trustees, individually and collectively, against any and all liabilities and reasonable expenses arising out of their serving as a Trustee, except (as to the individual Trustee or Trustees involved) for expenses and liabilities arising out of willful misconduct.

## **ARTICLE VII INVESTMENTS**

### **Section 1**      **Investment Policies**

The Board of Trustees shall establish and carry out funding and investment policies and methods consistent with the objectives of the Trust and the requirements of ERISA.

Investments shall be prudent and shall be diversified so as to minimize the risk of large losses unless it is clearly prudent not to do so. They shall not be in conflict with ERISA's prohibited transaction limitations. No fiduciary shall cause the Trust to engage in transactions which violate these requirements and any instructions from others upon which any corporate Co-Trustee must rely shall be consistent with these requirements.

### **Section 2**      **Investment Decisions**

The Board of Trustees may itself invest and otherwise manage the Plan's assets, or it may delegate all or some of these powers, including the power to acquire and dispose of plan assets to an Investment Consultant and/or Investment Manager that qualifies as such under ERISA and acknowledges in writing that it is a fiduciary with respect to the Plan. The appointment, selection and retention of any Investment Consultant and/or Investment Manager shall be solely the responsibility of the Board of Trustees and shall be revocable by it at any time.

The Trustees may also utilize the services of investment advisors, brokers, consultants, attorneys, administrators, or other persons in making investment decisions, particularly regarding short-term investments or small investments.

### **Section 3**      **General Investment Powers**

The Trust assets, or any part thereof, may be invested in securities issued by the United States Government and state governments; in common or preferred stock; in corporate bonds; in other securities listed on any exchange or traded in any over-the-counter market, including shares of mutual investment

companies; in pooled investment portfolios; in improved real estate; in notes; in short-term investment mutual funds or similar investment vehicles; in guaranteed investment contracts; in mortgages; in certificates of deposit of any bank, including any Fund Custodian; in commercial paper; in bankers' acceptances (excluding those of any Fund Custodian) or in any other properties in which this Trust may lawfully invest. (This list is for illustrative purposes only.) If any assets are ever held in which this Trust may not properly invest, they shall be disposed of as promptly as is prudent under the circumstances.

#### **Section 4**      **Specific Investment Powers**

Whoever holds title to Trust assets shall have all rights and powers with respect to investing the Trust property that an absolute owner would have, subject only to any written directions previously received from another fiduciary authorized hereunder to give such directions. These investment powers shall include, without limitation, the following powers in addition to those set forth elsewhere hereunder and other given by law.

- a) To hold in cash in a non-interest-bearing account such portion of the Trust assets as may be reasonably required for the day-to-day administration of the Trust and disbursement of benefits, by depositing the same in any financial institution such as a bank or savings and loan (including any bank acting as Fund Custodian hereunder) subject to the rules and regulations governing such deposits. Additional cash shall be placed in interest-bearing accounts and/or obligations (which may be with the Fund Custodian) until such times as it is otherwise invested;
- b) To participate in any plan of lease, merger, consolidation, exchange, foreclosure or reorganization affecting securities held hereunder at any time;
- c) To deposit stocks under voting agreements;
- d) To subscribe for stock or bond privileges;
- e) To vote with respect to all securities or other assets in person or by proxy, except that where an Investment Manager has been appointed and is acting, proxies and other shareholder material with respect to assets under its supervision will be forwarded to it if it so requests;
- f) To register securities in the name of a nominee, or to hold the same unregistered and in such form that they will pass by deliver;
- g) To lease, repair, alter, or improve real estate or other assets;
- h) To sell any securities, real estate, or other assets at public or private sale for such prices and upon such terms as it may deem proper, without liability on the part of the purchasers to see to the application of the purchase money;
- i) To borrow money and to secure the repayment thereof by mortgage on real estate, pledge of securities, or otherwise, without liability on the part of the lenders as to the application of the assets loaned.
- j) To invest Trust assets collectively with funds of other trusts in one or more of the investment funds for employee benefit trusts established by a Fund Custodian or any other common or commingled fund now or hereafter maintained by any Fund Custodian as the same may be amended from time to time; and if any portion of the Trust is so invested, the declaration creating such funds shall be deemed to be incorporated into this Trust Agreement the same as if fully set forth here;
- k) To lend stock certificates and other securities constituting part of the Trust assets to securities brokers and others; provided, that the terms and conditions of each such loan shall be established in accordance with, and shall comply with the applicable Training Program, this Trust Agreement and all applicable rules, regulations and laws governing the Board, the applicable Training Program and this Trust.
- l) To invest in hedge funds, private equity funds, venture capital funds, real estate funds and any similar types of investments and related types of investment vehicles.

## **ARTICLE VIII GENERAL PROVISIONS**

### **Section 1 Instruments Executed by the Trustees**

No party dealing with the Trustees, or any of them, shall be obligated to see to the application of any monies or properties of the Trust, or to see that the terms of the Trust Agreement have been complied with, or to inquire as to the necessity or expediency of any acts of the Trustees.

Every instrument executed by the Trustees shall be conclusive in favor of every person who relies upon it, that: A) At the time of the delivery of the instrument, the Trust Agreement is in full force and effect; B) The instrument was executed in accordance with the terms and conditions of the Trust Agreement; and C) The Trustees were duly authorized and empowered to execute the instrument.

### **Section 2 Applicable Agreements**

The rights and duties of all parties (so far as they relate to this Trust and Trust Fund), including each Employer, the Union, each Employee and their beneficiaries and Trustees shall be governed by the provisions of this Trust Agreement, the acts of the Trustees and the provisions of the applicable collective bargaining agreement providing for payment to the Trust Fund.

### **Section 3 Agreement Binding on Successors and Assigns**

This Agreement shall be binding upon and inure to the benefit of each Employer who is now or hereafter may become a party to or be bound hereby and his or her successors, purchasers and assigns.

### **Section 4 Individual Employers**

An individual Employer may become a party to the Trust Agreement by executing an Agreement to be bound by the terms of such Agreement. This may be effected by executing a collective bargaining agreement which requires the Employer to be bound by this Trust Agreement.

### **Section 5 Employer Contributions**

Nothing in the Trust Agreement shall be construed, directly or indirectly, to increase the amount of Employer contributions to the Trust beyond that set forth in the collective bargaining agreement.

### **Section 6 Collective Bargaining Agreement**

The Trust Agreement incorporates by this reference the provisions of the collective bargaining agreement which provides for the creation of this Trust, and in the event of conflict between the provisions of such collective bargaining agreement and the provisions of this Trust Agreement, the provisions of the Trust Agreement shall be controlling, but the Trustees will in administering the Trust Agreement implement collective bargaining agreement provisions relating to the Trust and not in conflict with the Trust Agreement so long as such implementation does not violate the law or prudent behavior.

### **Section 7 Association Employer Bound by Trust**

Any Employer who authorizes the Association and U.A. Local 342 to enter collective bargaining agreements requiring contributions to this Trust on behalf of said Employer shall be bound by this Agreement.

## **Section 8**      **Notice to Association as Notice to Employer**

Any notice required by this Trust Agreement, rules or regulations adopted by the Board of Trustees, to be given to Employers need not be given to those Employers who are represented by the Association and it shall be sufficient if such notice is given the Association, and one such notice to the Association shall be sufficient notice to all Employers represented by said Association.

## **Section 9**      **Governing Law**

The Trust Agreement and the performance thereunder shall be governed by and construed according to ERISA and other applicable federal law, and to the extent that federal law is not applicable, according to the laws of the State of California.

## **Section 10**      **Separability**

If any provision of the Trust Agreement, the Training Program established hereunder, the rules and regulations made pursuant thereto, or any other step in the administration of the Trust is held illegal or invalid for any reason, then such illegality or invalidity is not to affect the remaining portions of the Trust Agreement, or rules or regulations adopted. They shall be construed and remain in force as if the illegal or invalid portions had never been inserted or established, if the remaining portions will enable the objectives and purposes of the Trust to be accomplished. Should any of the provisions of the Trust Agreement or rules and regulations be declared illegal or invalid, the appropriate parties shall immediately adopt a new provision to take the place of that declared illegal or invalid.

## **Section 11**      **Costs and Expenses of Lawsuits**

The cost and expense of any suit or proceeding brought against the Trust Fund or against the Trustees or any of them (including reasonable attorneys' fees), in any matter arising out of or under this Trust Agreement, shall be paid from the Trust Fund. Such suit or proceeding includes a counterclaim, cross-complaint or administrative or arbitration proceeding. Such expenses or fees shall not, however, be payable for any proceeding brought against a fiduciary or fiduciaries on behalf of the Trust Fund to recover from a fiduciary or fiduciaries for damage or loss sustained by the Trust Fund on account of the alleged breach of fiduciary duty of defendant fiduciary or fiduciaries.

Such fees and costs will also be paid if the Trustees determine that (1) the act or omission was not within the scope of his or her service as a Trustee of the Fund; or (2) he or she acted or failed to act in breach of his or her fiduciary duty because of willful misconduct or gross negligence; or (3) the defense of the action or proceeding by the Board would create a conflict of interest between the Board or Fund and the Trustee, former Trustee or estate.

In an action filed by the Trust or any or all of the Trustees against a current or former fiduciary, the Trust shall not be obligated to pay or reimburse such current or former fiduciary (being sued) for his or her attorneys' fees, costs and other expenses, unless ordered to do so by a court or the Trustees agree to make such payments.

## **Section 12**      **Non-Reversion of Trust Funds**

Neither all nor any part of the Trust Fund nor any Plan shall revert to any Employer or be recovered by any Employer, or be used for, or diverted to the purposes other than the exclusive benefits of employees, or for the payment of the expenses of the Trust Program as herein authorized.

### **Section 13**     **Number and Gender of Words**

Whenever appropriate, words used herein in the singular may include the plural, the plural may be read as the singular, and the masculine may include the feminine and vice versa.

### **Section 14**     **Need not Inquire into Trustees' Authority**

No party dealing with the Trustees, or any of them, shall be obligated to see to the application of any monies or properties of the Trust, or to see that the terms of the Trust Agreement have been complied with, or to inquire as to the necessity or expediency of any acts of the Trustees.

### **Section 15**     **Applicable Agreements**

The rights and duties of all parties as they relate to this Trust and Trust Fund, including each Signatory Association, Employer, Employee (and his beneficiaries), the Union and the Trustees, shall be governed by the provisions of this Trust Agreement, the acts of the Trustees, and the provisions of the applicable Collective Bargaining Agreement providing for payment to the Trust Fund.

### **Section 16**     **Rights not Transferable**

Unless permitted by ERISA and approved in advance by the Board, all benefits provided to persons under the Plan shall be paid directly to them, shall not be liable for their debts or other obligations, may not be assigned, alienated or used as security by them, and shall not be subject to attachment, execution or other legal proceedings. Notwithstanding the foregoing sentence, if at any time any person entitled to receive future payments in excess of what he was entitled to receive as of that date, except to the extent prohibited by ERISA, the Board may withhold from future payments due to him or his Beneficiary such amounts as are necessary to reimburse the Trust for such excess payments.

## **ARTICLE IX   AMENDMENTS, TRANSFER OF ASSETS AND TERMINATION**

### **Section 1**     **Amendments**

The bargaining parties may amend this Trust Agreement at any time. The Board of Trustees may make a formal request to the bargaining parties that the Trust Agreement be amended; however, the bargaining parties make the final decision on whether to make the amendment. It is understood that members of the Board of Trustees are asked to sign this Agreement below even though the Trustees do not have the formal power to amend the Agreement. Any Amendment is subject to the following limitations:

A. Under no condition shall such amendment result in or permit the return or repayment to any Employer of any property held or acquired by the Trustees, or the proceeds thereof, or result in or permit the distribution or diversion of any property for the benefit of anyone other than Employees or their beneficiaries (except as otherwise provided herein).

B. No such amendment shall be effective if, as a result thereof, either the Plans or this Trust will no longer meet the requirements of Section 401(a) of the Internal Revenue Code, as it may be amended, as a tax-exempt Plan.

### **Section 2**     **Transfer of Assets to or from Another Benefit Trust**

Notwithstanding anything above to the contrary, the Board of Trustees may, if the Trust is wholly or partially terminated, transfer the Trust assets or any portion thereof to the Trustees of any other Trust

which provides similar benefits or may receive assets from any other such Trust which is wholly or partially terminated. The Board is authorized to merge the Trust with any similar type of Trust.

## **Section 2 Termination**

The Associations and the Union, acting jointly, have the right to discontinue or to terminate this Trust subject to the applicable collective bargaining agreements. If the obligation of all individual employers to make contributions shall terminate, or upon any liquidation of the Trust, the Trustees shall continue to apply the Trust to the purposes hereof. Upon the disbursement of the entire fund, the Trust shall terminate. Upon termination, benefits under the Plan are vested, except for a merger.

## **Section 4 Withdrawal by Individual Employers**

The Board of Trustees will impose withdrawal liability to the Hod Carriers Local 166 Pension Plan consistent with ERISA and may adopt rules and procedures to implement such procedures.

## **Section 5 Termination of Individual Employers**

The Board may terminate the participation of any Employer for failure to fulfill its requirement hereunder or failure to meet the requirements for participation as an Employer. The Board may adopt rules to protect the Trust if any Employer's participation terminates, whether voluntarily or involuntarily. These rules may provide for the curtailment, in whole or in part, of benefits attributable to or dependent upon employment with the terminating Employer. Neither the terminating Employer, its employees nor their representatives shall have any right to the return of any monies contributed to the Trust by the terminating Employer, all of which monies shall continue to be held hereunder. Any terminated Employer shall remain liable to the Trust for any obligations incurred by it prior to the effective date of its termination, and shall maintain adequate records available to the Trust so that those obligations may be verified.

The parties sign this agreement effective as of July 1, 2017.

NORTHERN CALIFORNIA DISTRICT  
COUNCIL OF LABORERS

/s/\_\_\_\_\_  
Oscar De La Torre, Business Manager

NORTHERN CALIFORNIA MASON  
CONTRACTORS MULTI-EMPLOYER  
BARGAINING ASSOCIATION

/s/\_\_\_\_\_  
Bob Mazza, Vice President

WALL AND CEILING ALLIANCE

/s/\_\_\_\_\_  
Frank Nunes, Chief Executive Officer

### **BOARD OF TRUSTEES**

The Board of Trustees has authorized the Chair and Co-Chair to sign on behalf of the full Board of Trustees agreeing to be bound by the above Trust Agreement.

#### **UNION TRUSTEES**

/s/\_\_\_\_\_  
Oscar De La Torre, Chairman

#### **EMPLOYER TRUSTEES**

/s/\_\_\_\_\_  
Bob Mazza, Co-Chairman