



AGC MASTER LABOR AGREEMENT
for
Building Construction

ASSOCIATED GENERAL CONTRACTORS OF AMERICA
San Diego Chapter, Inc.

and

OPERATIVE PLASTERERS' & CEMENT MASONS'
INTERNATIONAL ASSOCIATION
LOCAL NO. 500 / AREA 744

JULY 1, 2022 – JUNE 30, 2024

2022-2024
Cement Masons Building Agreement

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**AGC MASTER LABOR AGREEMENT
FOR BUILDING CONSTRUCTION**

**ASSOCIATED GENERAL CONTRACTORS
OF AMERICA
SAN DIEGO CHAPTER, INC.**

AND

**OPERATIVE PLASTERERS' & CEMENT MASONS'
INTERNATIONAL ASSOCIATION
LOCAL NO. 500 / AREA 744**

**SECTION 1
PARTIES TO AGREEMENT**

- A. This Agreement is entered into this 1st day of July 2022 by and between signatory members of Associated General Contractors of America, San Diego Chapter, Inc. (hereinafter referred to as the “Employers”), and Operative Plasterers’ & Cement Masons’ International Association, Local No. 500 / Area 744 (hereinafter referred to as the “Union”).
- B. Definitions:
1. Association means Associated General Contractors of America, San Diego Chapter, Inc. The Employers and the Union recognize and agree that the Association has no signatory status by the terms of this Agreement or otherwise.
 2. Employee(s) or worker(s) means the employed person or persons performing work covered by this Agreement within the recognized work jurisdiction of the Union as defined in this Agreement.
 3. Subcontractor means any person, firm or corporation, who contracts with the Employer to perform any jobsite construction work, as defined by this Agreement, including the operation of equipment, performance of labor and the furnishing and installation of materials.
 - a. The Employers and the Union recognize and agree that the San Diego County Building and Construction Trades Council is the administrative representative of the Union signatory hereto, and by the terms of this Agreement, has no signatory status.
- C. It is the desire of the parties to establish rates of pay, hours of employment and working conditions which shall be applicable to these workers in the performance of the work as hereinafter defined in this Agreement.

- D. The purpose of this Agreement is to ensure that all construction work performed by the Employer shall proceed continuously and without interruption, in an efficient and economic manner, to secure optimum productivity, and to facilitate the orderly performance of the work by improving efficiency and eliminating work stoppages, slowdowns, poor work practices and other interferences with the progress of the work.

SECTION 2
TERM, TERMINATION, AND RENEWAL

- A. This Agreement shall become effective on July 1, 2022 and shall remain in full force and effective through June 30, 2024, and from year to year thereafter, unless either party gives sixty (60) days written notice to the other party prior to July 1, 2024, or July 1 of any subsequent year, of its intention to amend, modify or terminate.
- B. While this Agreement continues in effect, neither party will make demands upon the other party for any changes in conditions or benefits or for any new or additional changes in conditions or benefits.

SECTION 3
AREA COVERED

The area covered by this Agreement shall be San Diego County, California, and San Clemente Island, California.

SECTION 4
WORK COVERED BY THIS AGREEMENT

- A. This Agreement shall apply only to construction jobsite work performed by the signatory Employer with his own forces in conjunction with the construction, alteration, modification, improvement, or repair, in whole or in part of a building, structure, or other jobsite construction work and shall not include any other jobsite construction industry work. Jobsite is defined as an area within which construction work is being performed, the boundaries for which are the same as those boundaries delineated in the specifications for the job or project which may include such references as right-of-way, parcel, subdivision map, dedicated street or lot. In the case of subdivisions or planned unit development where construction phases are stipulated by construction contracts, jobsite will mean only that area covered by phases or units currently under construction and under the Employer's control as further defined in Section 7 (A) and Section 26 of this Agreement. Repair and maintenance of equipment is specifically excluded from the coverage of this Agreement. This Agreement shall not apply to the layout and distribution of materials.
- B. This Agreement shall cover all building work within the jurisdiction of the Cement Masons Union, including the following:
1. Setting screeds, screed pins, curb forms, sidewalk, ADA ramps, curb and gutter forms, placing, rodding, spreading and tamping concrete, hand application of curing

compounds, applying topping (wet or dry) colors or grits; using Darby and push floats, hand troweling or hand floating; marking edging, brooming or brushing, using base cover or step tools; chipping, and stoning, patching or sacking; dry packing; aesthetic grouting; spreading and finishing gypsum, operating mechanical finishers (concrete) such as Clary, Jackson, Bidwell Bridge Deck Paver, roller screed and vibra screed or similar types; grinding machines, troweling machines, floating machines, powered concrete saws; finishing of epoxy and resin materials, bush hammering and exposed finishes for architectural work.

2. Operation of skill saw, chain saw, Laser Screed, Laser Level, Curb and Slipform machines, Epoxy Type Injection pumps, stamps or other means of texturing, any new devices which are beneficial to the construction of or with concrete or related products.

The foregoing shall apply to temporary yards established off the jobsite, to service a particular job, for the duration of that job.

3. All Cement Masons' work associated with Concrete Polishing, Concrete Architectural Staining and Stamping, and Pervious Concrete.

C. The provisions of Section 26 shall apply to curb, sidewalk and flatwork performed outside the building line on any project covered this Agreement.

SECTION 5 **UNION RECOGNITION**

The Employer recognizes the Union as the sole and exclusive collective bargaining representative of all employees employed to perform work covered by this Agreement. The Union does not at this time, nor will it during the term of this Agreement, claim jurisdiction over the following classes of employees: executives, superintendents, assistant superintendents, master mechanics, timekeepers, messengers, or office workers.

This recognition of majority support is based on an unequivocal request for recognition by the Union as majority representative along with the Union having shown or offered to show evidence of its majority support.

SECTION 6 **OBLIGATIONS OF EMPLOYER**

A. This Agreement is binding upon the Employer regardless of whether or not it changes the name or style or address of its business, if the Employer continues to perform work covered under Section 4 of this Agreement. The Employer shall give notice in writing to the Union of any intent to change the name, style or address of its business, or to perform business under more than one name or style or at more than one address, prior to the adoption of new or different name, style or address, or the addition of new names or styles or addresses, as specified herein.

B. The Employer shall continue to be bound by the terms of this Agreement under the new name or method of operation, including a partnership or corporation in which it has

majority control or interest, until such time as it terminates the Agreement in accordance with the provisions of Section 2 of this Agreement.

SECTION 7
EXISTING AND OTHER AGREEMENTS

- A. All existing labor agreements between the Employer and the Union for works covered by this Agreement are hereby canceled by mutual consent. This Agreement is a building construction agreement, covering projects of type I and II construction for work performed by the contractor's own forces inside the building line.
- B. This Agreement shall be deemed to have been executed when the parties signing shall have affixed their signatures hereto.
- C. It is the determination of the Union; unilaterally arrived at, that the prevailing wages and fringe benefits established by this Master Labor Agreement can best be maintained by insuring uniform conditions and benefits for all the workers it represents in its work and territorial jurisdiction. To this end, the parties have agreed that in the event the Union shall negotiate different terms and conditions of employment for employees performing jobsite construction industry work in classifications similar to those set forth in this Agreement in the territorial jurisdiction of the Union, the Association will be notified, and such terms and conditions shall be made available to the Employers. No Employer signatory to this Master Labor Agreement shall be required to provide terms or conditions of employment under this Master Labor Agreement any more favorable than such terms and conditions contained in any other agreement concerning jobsite construction work in San Diego County, with the sole exception being conditions under a project agreement negotiated pursuant to subparagraph 3 below.
 - 1. Any term or condition granted by the Union to any Employer, whether or not such Employer is a signatory member of the Association, may be adopted on a pick and choose basis for each individual item of such agreement, by Employers signatory to this Master Labor Agreement. The term or condition adopted by signators to this Agreement may be implemented by such Employers on any or all projects for the duration of this Agreement. Prior to granting any Employer such more favorable term or condition, the Union shall give the Association written notice of its intention to grant the more favorable term or condition. If the Union fails to give such notice, each Employer signatory to this Agreement can thereafter rescind this Agreement as it applies to each such Employer.
 - 2. When an Employer signatory to this Agreement wishes to use a non-signatory Subcontractor to perform jobsite construction work the Union will make available to the Subcontractor a project-only agreement which will adopt the terms and conditions of this Master Labor Agreement, for that project only. The Subcontractor shall have the option of providing its own workers to perform work covered by the project-only agreement, or it may request the dispatch of employees from the hiring hall. Any such workers covered by

the Subcontractor's project-only agreement will be subject to the union security provisions contained in this Agreement.

3. It is understood and agreed by the parties hereto that when situations arise that require separate single project agreements covering work to be performed on specific identified construction projects in the geographic area covered by this Agreement, to protect the interests of the Employers and promote jobs for Union members, such single project agreements will be negotiated in advance and the terms and conditions of these project agreements will be made available to all signatories hereto to protect the competitive bidding process on that specific geographic jobsite location. Any rates or conditions negotiated in these special single project agreements will not give any Employer signatory hereto the right to claim such rates and conditions for work performed on geographic jobsite locations other than that specifically defined in the special project agreement(s).
4. Where the Employer determines that he is at a competitive disadvantage, the Union, in concert with other affected construction trade unions in San Diego County, with whom the Employer has signatory status, may agree to reduce the terms and conditions of this agreement, to a level that will allow the employer to compete equitably on any job or project.

SECTION 8 **UNION SECURITY**

- A. Employees employed by one (1) or more of the Contractors for a period of eight (8) days continuously or accumulatively from the date of employment or the date of this Agreement, whichever is later, shall be or become after the eight (8) day period members of the Union and shall remain members of the Union as a condition of continued employment. Membership in the Union shall be available upon terms and qualifications not more burdensome than those applicable at such times to other applicants for membership in the Union.
- B. The individual Contractor shall not be required to discharge any employee pursuant to this section until a written notice from the Union of such employee's non-compliance with this section, stating all pertinent facts showing such non-compliance, shall have been served upon such individual Contractor. The Union shall be the sole judge of the members standing within the Union.

SECTION 9 **UNION REPRESENTATIVES**

After presentation of proper identification, the Employer shall afford bona fide representatives of the Union and a representative of the San Diego County Building and Construction Trades Council prompt and free access to the jobsite during construction for the purpose of conducting legitimate union business. If the Employer or his representative is present on the job, the Union representative shall apprise the Employer or his representative of his presence. Such union

representatives shall provide their own security credentials, if required. A Union representative must comply with all safety and health regulations and established practices of the Employer. In no event shall the representatives of the Union interfere with the progress of the work.

SECTION 10 **STEWARDS**

- A. The Union shall make the steward known to the Employer in writing. The steward shall be a competent journeyman. The Union agrees that the duties of the steward shall be performed expeditiously. The Employer agrees to allow the steward a reasonable amount of time for the performance of such duties. In no event shall the Employer discharge or lay off a steward before the completion of a job because of any actions taken by the steward in the proper performance of his Union duties necessary to the enforcement of this Agreement.
- B. The steward shall not:
 - 1. Stop the Employer's work for any reason;
 - 2. Tell any worker or any employee covered by this Agreement that he cannot work on the job;
 - 3. Initiate or threaten any physical altercation with any person on the jobsite;
 - 4. Appear on or near the jobsite under the influence of any intoxicant or drug; or
 - 5. Be dishonest or absent without authorization.
- C. Infraction of any of the rules in subparagraphs of B. shall be cause for immediate dismissal of the steward without any prior notice.
- D. The employer shall not be required to retain the steward in lieu of any employee whose employment with the employer pre-dates that of the steward.
- E. The Employer shall give the steward two (2) calendar days' notice before laying him off.

SECTION 11 **SAFETY**

- A. When it is called to the attention of the Employer or his representative by the Union representative that a flagrant violation of CAL-OSHA regulations that would cause major injury is being committed and the Employer or his representative fails or refuses to make correction immediately or when a California Department of Industrial Safety Engineer issues a citation declaring a portion or phase of a project unsafe, the Union will not be deemed in violation of this Agreement for refusing to allow employees to continue working on that portion or phase of a project. Any employee found to be willfully violating project safety or the CAL-OSHA orders adopted by the Industrial

Safety Board of the State of California may be immediately discharged, with prompt notification to the Union.

- B. The Employer shall furnish for the use of his employees any necessary protective clothing or gear as required by CAL-OSHA. Employees may be held monetarily responsible for such items properly checked out to them with the understanding that such items broken or worn out in normal use or lost in a manner beyond the control of the employee are excluded.
- C. The Employer shall furnish, where weather conditions require, suitable iced, chilled, or refrigerated water when requested by the majority of the employees on the jobsite. The Employer will furnish sanitary drinking water and toilet facilities at all time in accordance with California law.
- D. The union shall cooperate with the Employer in carrying out all of the Employer's safety measures and practices enumerated above, and employees shall perform their duties in such a manner as to promote efficient operations on all jobs. Employees and the Union shall comply with all applicable safety and health regulations and with the safety practices of the Employer.
- E. The Union shall cooperate to the fullest extent to ensure that employees meet the highest practicable level of safety training, and to comply with all safety training and certification requirements imposed by federal, state and local regulatory agencies. The Union shall accomplish this obligation by: (1) establishing its own safety training and certification program, (2) participating in such a program established by an Employer, or (3) participating in the programs established by the Association.

SECTION 12 **INJURY**

- A. Employees who are unable to work, as a result of an industrial injury, shall be paid for actual time worked.
- B. An industrial injury shall not be cause for discharge and an applicant for employment shall not be rejected because of prior industrial injury, provided the employee can perform his work competently and safely.

SECTION 13 **DISCHARGE**

- A. No employee shall be discharged or discriminated against for activities in behalf of or in representation of the Union not interfering with the proper performance of his duties.
- B. No employee covered hereby may be discharged or discriminated against by an Employer for refusing to cross or work behind a lawful picket line established by Local

#500 / Area 744 or for engaging in any other conduct protected by Section 7 of the Labor Management Relations Act of 1947, as amended. Except as otherwise provided for in this Agreement, work performed under this Agreement will be performed by employees covered under this Agreement.

- C. The Union recognized the Employer's right to establish a substance abuse policy for its employees. Any employee may be terminated for refusing to submit to (1) substance abuse screening, (2) for drinking on the job, (3) for drunkenness, (4) for dishonesty or for any lawful reason, which affects the employee's qualification to perform work on the jobsite.
- D. Any discharge may be subject to the grievance procedure.

SECTION 14 **HIRING**

In the employment of workmen for all work covered by this Agreement, the following provisions shall govern:

- A. Local Union 500/744 shall establish and maintain open and non-discriminatory employment lists for use of workmen desiring employment on work covered by this Agreement within the area of the Local Union. Any workman who so requests shall have his name placed on the dispatch list. Workmen's names shall be entered on said list in the order in which they present themselves for registration on the list.
- B. After each workman's name is entered on such list, there shall be entered a designation corresponding to the type or types of work in which the workman certifies he has had experience and is best qualified to perform.
- C. Whenever a Contractor requires Cement Mason new hires, he shall first call upon the Local Union in the area in which the job is being performed and shall request the Local Union to furnish workmen to him and the Local Union shall do so strictly in accordance with the provisions of this Article.
- D. It shall be the responsibility of the Contractor, when ordering workmen, to give the Local Union all of the pertinent information regarding the workmen's employment. The Contractor agrees that all work covered by this Agreement shall be performed by Cement Masons, who the Contractor or the Union agree are employees of the Contractor or subcontractors employed under the terms of this Agreement.
- E. The Local Union will furnish, in accordance with the request of the Contractor, each such qualified and competent workman from among those entered on said lists to the Contractor by use of a written referral in the following order of preference and the selection of workmen for referral to jobs shall be on a non-discriminatory basis:

1. The Contractor so requesting workmen shall have the absolute right to designate the workmen to be furnished him by name, with twenty-four (24) hours advance notice to the Union, and the Union shall comply with such request, provided for herein, and are available for employment. The requests of Contractors shall be made in writing, or orally, followed by a written confirmation. In the event an employer requests a particular workman not be sent from the lists, this request must be confirmed in writing stating the reasons for such request.
 2. If the Contractor does not designate workmen by name or if workmen designated by name are not available for employment or have not caused their names to be entered on the list, the Contractor shall inform the Union of the number of workmen he requires, the type of work to be performed, the date the job is to commence and its approximate duration. In dispatching workmen, the order in which their names appear on the list shall be given to those workmen whose designations correspond to the classifications for which the Contractor has requested workmen. The Union shall use its best efforts to furnish the number of qualified and competent workmen according to the request of the Contractor. If the Union is unable to furnish qualified workmen within twenty-four (24) hours after a Contractor calls for them, the Contractor shall be free to procure workmen from any other source or sources. He shall in such event promptly notify the local union in the areas where the job is located of the names and addresses of workmen so hired.
- F. The individual Contractor is the judge as to the competence of all his employees and applicants for employment. All employees must perform their work to the satisfaction of the Contractor. No employee shall be discharged or discriminated against for reasons of sex, age or race or for activities on behalf of, or in representation of, the Union not interfering with the proper performance of his duties. Any discharge may be subject to the grievance procedure. The first five (5) days of employment of any employee shall be a probationary period during which time any termination will not be challenged.
- G. Selection of applicants for referral to jobs shall be on a non-discriminatory basis and shall not be based on, or in any way affected by, Union membership, bylaws, rules, regulations, constitutional provisions, or any other aspect or obligation of Union membership policies or requirements.
- H. For each workman furnished, the Union shall send to the Contractor with the workman, or by mail, a written referral slip. The Contractor shall have the right to reject any workman referred by the Union for any reason. The Contractor may discharge any employee for just cause which the Contractor may deem sufficient, provided there shall be no discrimination on the part of the Contractor against any employee nor shall any such employee be discharged by reason of any Union activity not interfering with the proper performance of his work.

- I. Employees employed by one (1) or more of the Contractors for a period of eight (8) days continuously or accumulatively from the date of employment or the date of this Agreement, whichever is later, shall be or become after the eight (8) day period members of the Union and shall remain members of the Union as a condition of continued employment. Membership in the Union shall be available upon terms and qualifications not more burdensome than those applicable at such times to other applicants for membership in the Union.
- J. The individual Contractor shall not be required to discharge any employee pursuant to this section until a written notice from the Union of such employee's non-compliance with this section, stating all pertinent facts showing such non-compliance, shall have been served upon such individual Contractor.
- K. Employees employed by the Contractor pursuant to the terms of this Agreement shall not be removed or transferred by the Union signatory hereto or any of its Local Unions covered by the terms of this Agreement unless the prior approval of the Contractor has been obtained.
- L. The Contractor recognizes the desirability of employing workmen from the area in which the work is located, and the Union recognizes that in the employ of the Contractor are Cement Masons who are necessary to the efficient continuity of the Contractor's operations. Therefore, the Contractor may transfer up to three (3) Cement Masons and one (1) foreman to the jobsite from the Southern California area outside of San Diego County. After the transfer of no more than three (3) Cement Masons and one (1) foreman, the Contractor must hire the next three (3) Cement Masons from the Local Union. Thereafter, the Contractor may transfer from the Southern California area outside of San Diego one (1) additional Cement Mason for each Cement Mason hired from the Local Union hiring hall. The Contractor shall keep this 50-50 ratio intact (one (1) local person and one (1) person from outside the area) in employing, laying off and terminating Cement Masons. Foreman shall be excluded from any ratio. Only employees who have been employed by the Contractor for at least three hundred (300) hours in the last six (6) months may be transferred from one area to another area. The Contractor must properly clear all employees, including foreman and key employees, with a dispatch slip from the Local Union. The Union will not unreasonably withhold issuing a clearance. For the transfer of additional Cement Masons, the Contractor shall first contact the Local Union. Any additional transfers shall only be made by mutual consent.
- M. The contractor shall have the right to request workers that previously have met all security requirements as required by the owner when the requirement is part of the contract (i.e. Airport, Military, Schools, etc.). If a worker referred by the union to the contractor is rejected when a specific request is made by the contractor, the contractor shall not be required to pay show-up time for this worker.
- N. If the Union refers to the contractor a worker that fails an approved drug test, the contractor shall not be required to pay show-up time for that worker.

- O. When the contractor requests referral of minority, female, or any “protected class” worker and the Union is unable to refer such workers, the Union will provide to the contractor, when requested, written documentation detailing that the Union was unable to provide a worker that met the contractor’s request.

SECTION 15
EQUAL EMPLOYMENT OPPORTUNITY

- A. The Employer and the Union will not discriminate against any person with regard to employment or union membership because of his or her race, religion, color, sex, age national origin, or ancestry or other prohibited criteria. This shall apply to hiring, placement, training during employment, rates of pay or other forms of compensation, layoff or termination, and application for admission to union membership.
- B. In the event that an employee represented by the Union, or an applicant for employment, brings a claim against the Employer for an allegedly discriminatory hiring or employment practice, the Union agrees to cooperate fully with the Employer to ensure a prompt and full investigation of the circumstances pertaining to the alleged discrimination, its effects, and the potential remedy sought by the person bringing the claim.
- C. The Union will accomplish the development, implementation and administration of an affirmative action program.

SECTION 16
JURISDICTIONAL DISPUTES

- A. During the term hereof, there shall be no strikes, slowdowns or stoppages or work occasioned by jurisdictional disputes between the union and any other unions and all employees covered by this Agreement shall perform the work customarily performed by them and shall cooperate and work with employees represented by other unions without regard to past, present or future disputes on jurisdictional claims.
- B. When making work assignments, the Employer shall make reasonable efforts to assign the work in accordance with existing inter-craft agreements between the Union and any other unions with which the Employer may become signatory. In the absence of inter-craft agreements, the past practice of the area will prevail.

SECTION 17
STRIKES AND LOCKOUTS

- A. It is the purpose and intent of the Employers and the Union that all grievances or disputes arising between them over the interpretation or application of the terms of this Agreement shall be settled by the grievance and arbitration procedures, and the Union

agrees that neither it nor its officer, agents, members, nor employees represented by it will engage in, authorize, instigate, or aid work stoppages or strikes, interruptions, slowdowns, or other impeding of the work during the terms of this Agreement. The provisions of this section extend to all sympathy strikes affecting the Employer's operations, and to all strikes aimed at other employers who are working upon, or making deliveries to, the Employer's jobsite. There shall be no more than two (2) agents or representatives of the Union present on each of the Employer's projects at any one time. Further, the Union will use its best efforts to prevent, halt, terminate, and minimize the effect of any work stoppages, strikes, interruptions, slowdowns, or other impeding of the work.

- B. The Union shall have the right to immediately withhold or remove workmen or picket the job of any individual Employer who is in violation of the wage payment, fringe benefit payment and / or liquidated damage payment, or conference board decision (s) and shall, when ordered by the Trustees of any Trust covered by this Agreement, withhold or remove workmen from any Employer for failure to make trust fund contributions or submit business records, books and reports pertaining to the payment of wages, fringe benefits, and / or liquidated damages.
- C. The Employer agrees not to lock out any employees whose work is covered by this Agreement.
- D. The foregoing promises by the Union and the Employer shall be specifically enforceable by the Union and the Employer regardless of whether or not the subject of the dispute giving rise to the strike, work stoppage, slowdown or other impediment of work is subject to grievance and arbitration.
- E. This section shall not interfere with the employee's rights under the laws of the U.S. Department of Labor.
- F. It is agreed that the Union shall not hand bill, leaflet, banner or direct any other economic activity against the clients/customers/owners of the Employer's projects. This does not prevent the Union from any lawful picketing or economic activity against a non-signatory subcontractor.

SECTION 18
PROCEDURE FOR SETTLEMENT OF
GRIEVANCES AND DISPUTES

- A. All grievances or disputes shall be brought to the attention of the Employer within ten (10) working days of the occurrence giving rise to the dispute, or it shall be waived. Should a grievance or dispute arise on the jobsite, it shall be processed in the following sequence, using the number of steps necessary to dispose thereof.

1. The Craft Steward or Union representative is to receive grievances or disputes from employees represented by the Union and shall immediately report them to the Employer.
2. The Union representative shall endeavor to settle the grievance or dispute with the Employer.
3. The Union representative shall refer the grievance or dispute to the Association representative. The Association representative shall endeavor to settle the grievance or dispute with the Union representative and the Employer.
4. Failure to resolve the grievance or dispute by 1, 2, or 3 above, shall cause the grievance or dispute to be referred to the Joint Conference Board for settlement within fifteen (15) days after the conclusion of Step 3, or the grievance or dispute shall not be considered closed.
5. The Conference Board shall not be required to make adjustments in wage claims, or unpaid classification premium or overtime payment retroactive beyond forty-five (45) days, unless by unanimous vote of the Conference Board. Fringe benefits are excluded from decisions of the Joint Conference Board.

B. Conference Board.

1. There shall be a Conference Board of three (3) members, one representing the union, one representing the Employer, and one neutral member, who shall be Chairman.
2. The purpose of the Joint Conference Board is to settle disputes or grievances referred to it and to interpret this Agreement. The Joint Conference Board is to be limited to these purposes and shall hear cases and render decisions based solely upon interpretation of this Agreement for the Union and the Employer.
3. The Conference Board Chairman shall be selected by a selection committee comprised of two (2) representatives of the Union and two (2) representatives of the Employer. The selection committee shall be appointed by the signators within fifteen (15) days after consummation of this Agreement. The committee shall select its own chairman, or co-chairmen. The selection committee shall nominate eight (8) candidates for Chairman of the Conference Board. The Union representatives shall nominate four (4) candidates. From this list of eight (8) candidates, they shall select the Chairman of the Conference Board and the alternate Chairman of the Conference Board by majority vote, within thirty (30) days after consummation of this Agreement. The selection committee Chairman shall notify the signatory parties to this Agreement, the name, address and phone number of the elected Chairman and the alternate Chairman. In the event the elected Chairman is not available to hear a case that has been

scheduled, or a vacancy occurs by resignation, disability or death, the alternate Chairman will hear the case. The Conference Board Chairman and members of the Conference Board shall serve for the term of the Agreement, or until replaced, if for a lesser time.

4. Conference Board members other than the Chairman shall be appointed by the signators in the following manner: The Union and the Employer Association shall each appoint four (4) representatives and two (2) alternates making a total of twelve (12) regular and alternate members to the grievance panel, only one (1) of which from the Union panel and the Employer panel shall hear the case with the Chairman.
5. The Joint Conference Board will convene upon request of the Association or upon the request of the Union using the following procedures:
 - a. If the request is initiated by the Union upon written request to the Association representative and the Employer involved.
 - b. If the request is initiated by an Employer and / or Association upon written request to the Union.
6. This meeting shall be scheduled by the Chairman not sooner than forty-eight (48) hours nor more than seven (7) days after receipt of said request for a Conference Board hearing, unless mutually agreed upon by the parties to the grievance.
7. A quorum requires that all Conference Board positions be filled. There shall be one (1) Union representative, one (1) Employer representative and the Chairman present. Each shall have one (1) vote.
8. The Conference Board shall meet upon request or as it deems advisable to set up ground rules, study and interpret this Agreement, and to prepare forms and procedures for hearing and presentation of cases.
9. The Conference Board shall keep minutes and shall notify all parties of decisions rendered, in writing.
10. Any expenses incurred by the Joint Conference Board shall be paid equally by the Union and the Employer, regardless of the decision.
11. The elected Chairman shall be paid \$400.00 for each case at which he officiates.
12. Voting on any grievance or dispute or any other proposition shall be done in executive session only and no record of the distribution of votes shall be kept or distributed.

- a. The Joint Conference Board shall remain in session, exclusive of recess, until it has arrived at a decision.
13. The determination of the Joint Conference Board is final and binding upon the parties. There shall be no appeal.
 - a. A simple majority vote is required to dispose of items on the agenda.
 - b. The Joint Conference Board shall have the right of discovery in specific cases subsequent to convention for the hearing on that specific case.
 - c. The grievance procedure is limited to signatory members of the Association.
 - d. There shall be no attorneys, court reporters, or recording devices of any type at the Conference Board hearings.

PAGA **GRIEVANCE OF DISPUTES**

The Parties to this Agreement recognize that the Supreme Court of the United States has consistently held for over fifty years that federal law and policy favors the use and finality of arbitration procedures established through collective bargaining agreements to resolve all nature of disputes affecting the employee-employer relationship.

As the designated representative of employees, the Union contracts regarding the specific terms and conditions of employment as well as the enforcement mechanism to ensure those conditions are met, which mechanisms include grievance arbitration. These terms, conditions and enforcement mechanisms are generally superior to those available to employees not covered by collective bargaining agreements. Grievance arbitration provision in a collective bargaining agreement is reflected in national labor laws and is premised on the federal policy to promote industrial stabilization through the collective bargaining agreement. “A major factor in achieving industrial peace is the inclusion of a provision for arbitration of grievances in the collective bargaining agreement.” *United Steelworkers of Am. v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 577-78, 80 S. Ct. 1347, 1350, 4 L. Ed. 2d 1409 (1960). *D.R. Horton, Inc. v. N.L.R.B.*, 737 F.3d 344, 361 (5th Cir. 2013) (“[W]e discern [] in the structure of the [National Labor Relations Act] the very specific right of employees to complete the collective-bargaining process and agree to an arbitration clause.” Citing, *Blessing v. Freestone*, 520 U.S. 329, 343, 117 S.Ct.1353, 137 L.Ed.2d 569 (1997) (internal quotation marks and citation omitted).

The Parties to this Agreement recognize that the National Labor Relations Board has held that the pursuit of collective or class action claims is concerted action but that a union may waive certain rights to concerted action in a collective bargaining agreement. In doing so, the National Labor Relations Board recognized that a collectively bargained arbitration clause stems from the exercise of rights to act in concert and that “[F]or purposes of examining whether a waiver of Section 7 rights is unlawful, an arbitration clause freely and collectively bargained between a union and an employer does not stand on the same footing as an employment policy... imposed on individual employees by the employer as a condition of employment.” *D. R. Horton Inc.*, 357 NLRB No. 184 (January 3, 2012).

The Parties to this Agreement recognize that arbitration pursuant to the grievance procedure affords numerous benefits including expedited resolution of disputes; reduced cost and expense as compared to litigation; potentially greater monetary relief to individual employees; benefit of the arbitrator's knowledge and expertise with the bargaining parties, the employment relationships governed by the collective bargaining agreement, and the practices of the construction industry; less restrictive rules of evidence; and less formal procedures. The Parties also recognize that class and representative action procedures are designed to afford a mechanism of relief for claims for which the costs of litigation are disproportionate to the available relief and that this grievance procedure addresses the same concerns by providing an expedited mechanism at reduced cost to address such claims without the need for class or representative action procedures. It is therefore the intent of the parties that this grievance procedure provides a mechanism for resolving the individual claims covered herein which balances expedited and complete relief to employees for violations with avoidance of unnecessary costs and disproportionate remedies associated with class and representative actions.

Arbitration of Employment Related Claims.

Any dispute, complaint or grievance alleging a violation of the Master Labor Agreement shall be processed through the Procedure for Settlement of Grievance and Disputes in Article VI, and the Local Union and Union shall retain sole and exclusive ability to bring such a grievance to arbitration pursuant such Article. In addition, any dispute, complaint or grievance concerning a violation of, or arising under, Industrial Welfare Commission Wage Order 16 ("Wage Order 16") which is subject to the Procedure for Settlement of Grievance and Disputes in Article VI by operation of Wage Order 16 and exemptions contained therein for employees covered by collective bargaining agreements shall remain subject only to Article VI and not this Appendix M. Disputes, complaints or grievances within the scope of this paragraph shall be referred to as "Contractual Disputes".

In addition to Contractual Disputes that may be brought by the Union or Local Union as described above, all employee disputes concerning violations of, or arising under Wage Order 16 (except as noted in the immediately preceding paragraph), the California Labor Code Sections identified in California Labor Code section 2699.5 as amended, the California Private Attorneys General Act (Labor Code section 2698, et seq.), and federal, state and local law concerning wage-hour requirements, wage payment and meal or rest periods, including claims arising under the Fair Labor Standards Act (hereinafter "Statutory Dispute" or "Statutory Disputes") shall be subject to and must be processed by the employee pursuant to the procedures set forth in this Appendix M as the sole and exclusive remedy. To ensure disputes are subject to this grievance procedure in accordance with the intended scope of coverage set forth herein, Statutory Disputes also include any contract, tort or common law claim concerning the matters addressed in the foregoing laws (other than a claim of violation of the Master Labor Agreement which are deemed Contractual Disputes). This Appendix shall not apply to claims before the National Labor Relations Board, the Employee Equal Opportunity Commission, the Department of Fair Employment and Housing, and the California Division of Workers' Compensation.

Procedure for Arbitration of Disputes.

No Statutory Dispute subject to this Appendix M shall be recognized unless called to the attention of and, in the event it is not resolved, confirmed in writing by the individual employee to the individual Contractor and the Local Union within the later of (i) the time set forth in the Procedure for Settlement of Grievance and Disputes in Article VI or (ii) the time provided for under applicable statute.

Grievances and arbitrations of all Statutory Disputes shall be brought by the individual employee in an individual capacity only and not as a grievant or class member in any purported class or representative grievance or arbitration proceeding. The Arbitrator shall have the authority to consolidate individual grievances for hearing but shall not have the authority to fashion a proceeding as a class or collective action or to award relief to a group or class of employees in one grievance or arbitration proceeding.

The Arbitrator shall have full authority to fashion such remedies and award relief consistent with limitations under federal and state law, and precedent established thereunder, whether by way of damages or the award of attorneys' fees and other costs, orders to cease and desist, or any and all other reasonable remedies designed to correct any violation which the Arbitrator may have found to have existed, including such remedies as provided under applicable state or federal law or regulation. The decision of the Arbitrator is final and binding upon the parties and is enforceable in a court of competent jurisdiction.

The Arbitrator shall not have any authority to award relief that would require amendment of the Master Labor Agreement or other agreement(s) between the Union and a Contractor or the Contractors, or which conflicts with any provision of any collective bargaining agreement or such other agreement(s). Any arbitration outcome shall have no precedential value with respect to the interpretation of the Master Labor Agreement or other agreement(s) between the Union and a Contractor or the Contractors.

The parties agree to review the Appendix on a regular basis and as the law evolves, engage in good faith discussions to consider modifications to maintain its effectiveness.

The parties to confirm that in addition to the claims listed above, the parties have also agreed to provide for final and binding arbitration of any and all claims that could be asserted under all local, state and federal anti-discrimination laws, including but not limited to the California Fair Employment and Housing Act, Title VII of the Civil Rights Act 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Family and Medical Leave Act, and the California Family Rights Act. All claims for discrimination, harassment or retaliation in employment on the basis of race, age, sex, gender, religion, national origin, alienage, religion, marital status, sexual orientation, disability, or any other basis that is protected under any of those laws, as well as all related or similar claims (including but not limited to those for wrongful termination in violation of public policy and retaliation in violation of Labor Code section 1102.5), shall be resolved exclusively under and in accordance with the procedure for settlement of grievances and disputes set forth in Appendix M of the Agreement and not in a court of law.

This agreement to arbitrate such claims shall also include those asserted against any of the Employer's parent, subsidiary, or related entities.

APPENDIX O
PRIVATE ATTORNEY GENERALS ACT

The Operative Plasterers' & Cement Masons' International Association Local No 500 / Area 744 and its affiliated local unions (“Union”), on the one hand, and the Associated General Contractors of America, San Diego Chapter, Inc. on the other hand, are parties (hereinafter “Parties”) to a Master Labor Agreement (“Agreement”) that will expire on June 30, 2024. The Parties to this Agreement hereby agree to amend it with respect to the following Recitals and Resolutions in this Memorandum of Understanding (“MOU”) for the purpose of availing themselves of the exemption that the Private Attorney Generals Act, in particular Labor Code § 2699.6, extends to collectively-bargained contractors in the construction industry.

RECITALS

WHEREAS, Governor Jerry Brown signed Assembly Bill 1654 (“AB 1654”) on September 19, 2018, which added Section 2699.6 to the Labor Code;

WHEREAS, AB 1654 exempts from the coverage of the Private Attorney Generals Act (Part 13 of Division 2 of the Labor Code (commencing with Section 2698)) (“PAGA”) any “employee in the construction industry” as that term is defined by Labor Code §2699.6(d), with respect to work performed under a valid collective bargaining agreement that meets the requirements of AB 1654, in particular, Labor Code §2699.6(a) (“Exemption”);

WHEREAS, the application of that Exemption requires satisfaction of certain conditions set forth in Labor Code

§2699.6(a)(1)-(3), which mandates that a collective bargaining agreement such as this Agreement contain wages, hours of work, and working conditions of employees, premium wage rates for all overtime hours worked, and for the employee to receive a regular hourly pay rate of not less than 30 percent more than the state minimum wage rate and the following provisions:

(1) Prohibits all of the violations of the Labor Code that would be redressable pursuant to PAGA, and provides for a grievance and binding arbitration procedure to redress those violations.

(2) Expressly waives the requirements of PAGA in clear and unambiguous terms.

(3) Authorizes the arbitrator to award any and all remedies otherwise available under the Labor Code, provided that nothing in this section authorizes the award of penalties under this part that would be payable to the Labor and Workforce Development Agency.

WHEREAS, Article VI of this Agreement contains provisions authorizing the filing of a grievance which can be pursued to final and binding arbitration (“Grievance / Arbitration Machinery”);

WHEREAS, the Parties wish to avail themselves of this Exemption by agreeing to the terms of this MOU;

WHEREAS, all Recitals shall be deemed Resolutions and all Resolutions shall be deemed Recitals.

RESOLUTIONS

WHEREFORE, the parties clearly and unambiguously waive the provisions of PAGA, and agree that none of the provisions of PAGA shall apply to any of the employees covered by this Agreement;

WHEREFORE, the parties agree that the Union may file a grievance pursuant to this Agreement's Grievance / Arbitration Machinery and such a grievance can assert violations of the Labor Code that are redressable by PAGA, which include those sections enumerated in Labor Code §§ 2699.5 and 2699(f) and any others to ensure application of the Exemption;

WHEREFORE, an arbitrator presiding over an arbitration conducted pursuant to the Grievance / Arbitration Machinery shall have the authority to make an award of any all remedies otherwise available under the Labor Code except for an award of penalties that would be payable to the Labor and Workforce Development Agency, and that any Labor Code violations asserted by the Union that are redressable by PAGA will be deemed violations of this Agreement if so found by the arbitrator;

WHEREFORE, the parties agree that the terms of this MOU meet all conditions for application of the Exemption in AB 1654

SECTION 19 **PAYMENT OF WAGES**

- A. All wages shall be paid on a designated weekly payday and in no event shall the Contractor withhold more than five (5) working days. If the regular payday falls on a holiday, the employees shall be paid on the next regular workday. Employees shall be paid prior to the ending of their regular shift.
- B. When men are laid off or discharged, they must be paid wages due them at the time of layoff or discharge. At such times as an employee is paid, he shall be furnished a personal record showing straight time and overtime hours paid and all deductions itemized for the current pay period. Such record shall show the employee's name, and the Employer's name and address. In the event the Employer fails to pay employees laid off or discharged, they shall be paid waiting time per the laws of the State of California.
- C. An employee who quits, or refuses to work, shall be mailed his pay in full by certified mail to his last known address within seventy-two (72) hours, or be paid prior to leaving the job or project. If the employee has previously authorized electronic payment of wages, payment of the final check may also be made by electronic deposit as long as it meets the time criteria specified in this Article. In the event these stipulations are not met, he shall receive waiting time as noted above.

- D. If a Contractor pays an employee by check, draft or voucher, which check, draft or voucher is subsequently refused payment because the Contractor has no account with the bank, institution or person on which drawn, or insufficient funds to his account at the time of presentation, the Contractor shall be required to issue only certified checks for all employees working under this Agreement on that job for the duration of the job on which said check was issued, and shall reimburse the employee immediately by certified check for the insufficient fund check issued and for the bank charges assessed.
- E. When Employees covered under the terms of this Agreement are employed at a higher straight- time hourly rate of pay than the minimum established herein during any shift, the higher straight time hourly rate of pay shall apply on all time worked during that day This clause only determines the straight-time hourly rate and is not impacted by overtime, holiday, Sunday and any other premium pay multipliers.
- F. When an employee is injured while at work to the extent of being unable to work for the balance of the day, he shall be paid for a full day at his regular rate. His ability to work or not to work shall be determined by a qualified physician.

SECTION 20
WORK PERIODS

- A. Forty (40) hours worked from Monday through Friday shall constitute a week's work. Work on a Sunday or a holiday shall be payable at the rate of two (2) times the employee's straight-time hourly rate, unless the Sunday work is in accordance with a regularly scheduled shift as designated by the Employer. Notice of shift hours will be provided by the Employer to the Union in writing, and shift arrangements are subject to change at the discretion of the Employer.
 - 1. In addition, when the above conditions exist, and it is necessary to begin a shift at 8 p.m. or later on a Sunday, the overtime rate will not apply.
 - 2. The Union will agree to any special shift arrangement required by the Employer.
- B. No employee shall be required to work more than five (5) consecutive hours without a one-half (1/2) hour meal break. When employees are required to work over five (5) hours without being provided with a one-half hour uninterrupted meal period, they shall receive the appropriate overtime rate of pay.
- C. All starting times shall be determined by the Employer.
 - 1. Staggered starts may be implemented within two (2) hours after the initial start time at the Contractor's discretion. For staggered start times between two (2) and four (4) hours after the initial start time, the Contractor must notify the

union of start times, 24 hours prior to the commencement of the shift. All employees assigned to staggered starts are guaranteed their full shift.

- D. Make-up Day- Where the employee lacks the necessary hours to complete his forty (40) hours in any one week, on a voluntary basis the employee may work up to an eight (8) hour straight time shift on Saturday. The make-up day shall apply to special or multiple shift arrangements.
- E. Workman will be paid show-up time when he is dispatched to the Employer through the Union's hiring list or when the employee is told by the foreman or superintendent to report for work and no work is provided. It is the employer's responsibility to inform the employees if there is no work, unless the reason for no work is due to inclement weather.
1. A workman so dispatched, will not be paid show-up time when:
 - a. The Employer has notified the Union, in writing; not to refer said workman for re-employment.
 - b. He fails to report by starting time established by the Employer and specified at the time of ordering the workman. The Employer may waive this paragraph by hiring the workman, regardless of time of reporting.
 - c. He reports for work in unfit conditions or without proper tools, referral, or credentials.
 - d. He is unable or refuses to perform the specified work for which he was requested; in which case the Employer or his representatives shall immediately notify the Union. If the employee is unable to perform the specified work for which he was requested, he shall be paid only for actual time worked.
 - e. He has been notified before the end of the last preceding shift not to report.
 2. An employee discharged for incompetence shall receive pay for the actual hours worked.
 3. Any employee who reports for work shall receive not less than two (2) hours pay, and if more than two hours are worked in any one (1) day he shall receive four (4) hours pay, and if more than four (4) hours are worked in any one (1) day, he shall receive eight (8) hours pay, and if more than eight hours are worked in any one (1) day, he shall receive the rate of pay required by the laws of the State of California, unless the reason for the stoppage is due to inclement weather.
 4. On overtime days, whenever employees work more that four (4) hours they shall be paid only for actual hours worked at the overtime pay.

5. Any employee who refuses to accept a work assignment from the Employer, at the end of any one of the above shift segments, shall be paid actual hours worked for that day.
 6. No employee shall be required to furnish to the Employer transportation of the Employer's tools, materials, or equipment of any kind.
- F. "When it is necessary to shut down a job or project because of a bomb threat, or for reasons beyond the control of the Contractor, including, but not limited by, such factors as inclement weather, a breakdown causing discontinuance of a major unit of the project during which time workmen or employees are not required or requested to remain on the project by the Contractor, employees will be compensated as follows:"
1. If such an event occurs before the regular starting time and the employer (contractor) fails to notify the employee not to appear for work, the employee shall receive two (2) hours show-up pay if the employee does appear for work.
 2. In order to qualify for this two (2) hour show up pay, the employee must remain on the job for two (2) hours unless the employer agrees to allow the employee to leave early.

If the event occurs after the first two hours of the work day, the employee will be paid only for hours worked.

SECTION 21 **HOLIDAYS**

The following days are recognized as holidays:

New Year's Day
President's Day
Memorial Day
Independence Day
Labor Day
Veteran's Day (November 11)
Thanksgiving Day
Day after Thanksgiving Day
Christmas Day

If any of the above Holidays should fall on Sunday, the Monday following shall be considered a legal holiday. Work on such days shall be paid at the double time rate. Nor work shall be required on Labor Day except in cases of extreme urgency when life or property is in imminent danger.

SECTION 22 **TRANSPORTATION / PARKING**

Employees shall travel to and from work on their own time and by means of their own transportation. The Employer shall not be responsible for toll expenses. On all projects within

the jurisdiction of the Center City Development Corporation of San Diego, the Employer shall provide free parking within 350 yards of the project for all Employees covered under this Agreement. If Employer is unable to provide such free parking, then he shall reimburse each such Employee for the Employee's actual cost of parking up to \$10.00 per day. Such reimbursements will be made on a weekly basis and only upon presentation of a valid receipt showing the actual cost of parking and the date paid. If the Employee is not on the Employer's job site of the day upon which payment is to be made, then the reimbursement check shall be delivered to the union hall.

SECTION 23 **CRAFT WORKING RULES**

- A. The Employer shall not require, directly or indirectly, an employee covered by the terms of this Agreement to furnish a pickup or other conveyance to transport the Employer's tools, materials or equipment of any kind.
- B. Foreman means a Cement Mason working employee appointed by the Employer giving orders to other employees. A foreman will receive \$3.00 per hour over the highest base wage paid to a journeyman under his direct supervision and on the Employer's payroll. The foreman may supervise a crew on more than one job-site. The foreman rate shall not be affected by premium pay unless the foreman is actually engaged in performing work requiring a premium rate. When five (5) or more Cement Masons are employed on one job, one (1) cement mason shall be employed as a Lead Cement Mason and that employee shall receive the foreman's scale of wages on that project only and he will work with the tools of the trade.
- C. Breaks, and Rest Periods

Meal Period. There shall be a regularly scheduled meal period. The meal period shall be one-half (1/2) hour and shall be scheduled to begin not more than one-half (1/2) hour before and completed not later than one (1) hour after the mid-point of the regularly scheduled hours of work for each Employee's shift. The meal period for Mechanics, Service, and Lubricating Engineers, may be scheduled to permit work at the applicable straight-time rate during the regularly scheduled meal period.

If the individual Employer requires the Employee to perform any work included in this Agreement through his/her scheduled meal period, the Employee shall be paid at the applicable overtime rate for such meal period and shall be afforded an opportunity to eat on the Individual Employer's time.

Second (2nd) Meal Period. No Employee shall be required to work continuously for more than ten (10) hours per workday without the individual Employer providing the Employee with an uninterrupted second (2nd) thirty (30) minute meal period.

However, if an Employee works over ten (10) hours, the Individual Employer and Employee may mutually agree to waive the Employee's entitled second (2nd) meal period so long as the first (1st) meal period was taken, and the Employee works not more than a total of twelve (12) hours.

Should any provision of California State Labor Code Section 512 be amended during the term of this Agreement, the parties agree to meet to abide by those changes.

All disputes concerning meals and/or rest periods or heat illness/cooldown are subject to the Grievance Procedures and must be brought to the attention of the Employer, in writing, by the Union or Employee within fifteen (15) business days of the alleged violation. Decisions resolving disputes arising out of the Grievance Procedures shall be final and binding upon both parties.

Rest Periods. As provided by the State of California Industrial Welfare Commission Order No. 16-2001 covering Construction operations, Employees are authorized and shall be permitted to take a total of ten (10) minutes during each four (4) hour segment of their assigned work shift for a rest period.

There shall be no formal organized rest periods during working hours and as far as practicable the break be taken as near to the middle of each four (4) hour work segment as possible. Rest periods shall be scheduled in a manner so as not to interfere with workflow or continuous operations and Employees shall coordinate the timing of each ten (10) minute rest break with their supervisors and fellow employees to assure the continuity of work. Employees shall be required to remain in their respective work area, or to take their rest period in a specific area designated by the Individual Employer.

It is understood that the Employee will take his appropriate rest period unless the Individual Employer specifically directs the Employee not to take this rest break due to operational requirements. Employees are required to notify their supervisor whenever they are unable to take their state-mandated rest period.

All disputes concerning meals and/or rest periods or heat illness/cooldown are subject to the Grievance Procedures and must be brought to the attention of the Employer, in writing, by the Union or Employee within fifteen (15) business days of the alleged violation. Decisions resolving disputes arising out of the Grievance Procedures shall be final and binding upon both parties.

D. *Meal and Rest Period Penalties*

IWC Wage Order and California Labor Code section 226.7 provide, in certain circumstances, for an additional hour of pay for each workday that a meal or rest period is not properly provided. These additional hours of pay are often referred to as meal or rest break premiums. In the event any meal or rest break premiums are found due, any such premium shall be calculated at the worker's base wage rate not including fringe benefits or other amounts. In addition, no fringe benefit contribution shall be due to any union trust fund in connection with the payment of meal or rest break premiums. In this

way, meal and rest break premiums are not “hours worked” requiring a corresponding fringe benefit contribution, nor are meal and rest premiums “hours paid” requiring a fringe benefit contribution

- E. Heat Illness & Recovery Period. A heat illness preventative cool-down period shall be made available for employees working in high heat conditions in order to prevent heat illness in accordance with CAL OSHA requirements.

All disputes concerning meals and/or rest periods or heat illness/cooldown are subject to the Grievance Procedures and must be brought to the attention of the Employer, in writing, by the Union or Employee within fifteen (15) business days of the alleged violation. Decisions resolving disputes arising out of the Grievance Procedures shall be final and binding upon both parties.

- F. Any Cement Mason that is required to operate a cement mason troweling machine will be paid \$0.25 per hour over the hourly base rate.

SECTION 24 **SUBCONTRACTORS**

The contractors shall subcontract work covered by this agreement to persons, firms or corporations party to an agreement with the UNION provided that such persons, firms or corporations are competitive in terms of job bids. Should this not be the case, the employers shall be free to subcontract work covered by this agreement without regard to the signatory status of the subcontractor. However, the employer shall endeavor to notify the union in such event. The employer shall be the sole judge of a subcontractor’s competitiveness. The employer agrees to utilize Cement Masons for work covered by this agreement that is not subcontracted.

SECTION 25 **WAGES**

Classifications and pay rates shall be those listed on Appendix “A” to this Agreement.

SECTION 26 **PUBLIC WORKS PROJECTS COVERED BY THE DAVIS-BACON ACT AND** **RELATED STATUTES OR THE CALIFORNIA LABOR CODE** **SECTION 1720 ET SEQ.**

- A. In the event that the Employer bids and contracts for public job or project by a federal, state, county, city or other public entity which is to be performed at a predetermined and / or prevailing wage rate established by the California Department of Industrial Relations or the Secretary of the United States Department of Labor, the wage rate for

the project will be rate required in this agreement. If the established wage rate is higher than the rate in this agreement, the established rate shall prevail.

- B. If there is an increase in fringe benefit contribution rates under this Agreement during the life of public works project, the fringe benefit rate increase shall not apply to contractors working on predetermined or prevailing wage projects unless the fringe benefit rate increase is incorporated into the predetermined or prevailing rates established for the project.
- C. In the event of a mandated overall reduction in the Cement Mason wage & fringe rates for San Diego County, the parties agree to meet at the call of either party, to adjust the wages and fringes contained herein to comply with said mandate.

SECTION 27 **HEALTH AND WELFARE**

- A. Employers signatory to this Agreement agree to pay to the Cement Masons Southern California Health & Welfare Plan, covering Cement Masons Local Unions 500 & 600 affiliated with the Southern California District Council of Operative Plasterers & Cement Masons International Association, AFL-CIO, as its principal Trust Office located in the County of Los Angeles, California. The sum designated in Appendix “C” of this Agreement for each hour worked by employees or for which they receive pay, for all employees covered by this Agreement.
- B. In the event of a National Health Plan, the Union and the Employers shall meet to discuss and evaluate the cost impact upon the Contractors by the National Health Plan.
- C. The Union and the Employers shall devise a payment plan that conforms to Section 28 B so that there will be no additional cost for Health & Welfare above the amount the Contractor is obligated to pay under the Master Labor Agreement.
- D. The participation of the Employers in the above-cited Trust shall be for the duration of this Agreement and any renewals or extensions thereof, or for the terms of the Trust, whichever shall be greater. (This money paid into the Health & Welfare Trust Fund is to be used for health and welfare benefits, pursuant to the certain Trust Agreement referred to for convenience as the Cement Masons Southern California Health & Welfare Plan.)
- E. The parties mutually recognize the cost of providing health and welfare coverage has significantly increased over time and is projected to continue increasing in the future. As means of containing cost, the parties agree to explore the feasibility of merging the Cement Masons Southern California Health & Welfare Plan with a complete Health & Welfare Fund (s). in the event a compatible fund is found and is in the best interest of the current Plan Participants, the Plan sponsors will take the necessary steps to accomplish a merger. This provision is intended to provide the Plan Sponsors with the

discretion to research and possibly merge the Southern California Health & Welfare fund but is not a contractual commitment subject to the grievance and arbitration under the collective Bargaining Agreement. Any action to merge the Health & Welfare funds first require approval of the Bargaining Parties.

- F. The Cement Masons' Health and Welfare Trust Fund for Southern California shall, at all times, be maintained by its Trustees in compliance with all applicable provisions of the Affordable Care Act and other laws and, in particular, shall satisfy the conditions needed to ensure that the Employers are eligible for and protected by the "multiemployer arrangement pass-through" exemption from penalties under section 4980H for employees on whom contributions are made pursuant to this Agreement and any related participation agreement the Employers may execute providing benefit coverage for non-jobsite employees and/or supervisory personnel.

G. ADR Program:

The parties Agree that it is in the best interest of the industry to participate in an Alternative Disputes Resolution ("ADR") program for workers compensation claims. To that end, the parties agree to participate in the Operating Engineers Workers Compensation Trust Fund ("WCTF") or such other ADR Program as may be mutually agreed upon at a later time. The Employers and the Unions hereto approve of and consent to, the appointment of Trustees designated by the WCTF Trust Agreement and agree to be bound to all terms, conditions, provisions, privileges and obligations provided for such trust agreement as it is now or may be subsequently amended. Two cents (\$0.02) from the WCTF will be allocated to the ADR Program.

SECTION 28
PENSION

- A. The Employer will contribute the sum listed on Appendix "C" for all hours worked by employees of the San Diego County Cement Mason's Trust Fund. Any change in contribution rates shall reduce the wage rates contained in this Agreement accordingly, so that the total wage/fringe package costs remains constant.
- B. The Employer adopts and agrees to become bound to the trust agreement establishing the San Diego County Construction Cement Masons' Pension Trust Fund. The Employer designates and agrees to the appointment of the from time-to-time Employer trustees to the pension trust.
- C. If Trustees of the Pension Plan are required by the PENSION Protection Act of 2006 to impose an increase in the employer contribution to the Pension Plan during the term of the agreement because of a funding deficiency per the provisions of the Act, the employee base wage will be reduced by the same amount as the increased contribution. However, the parties to this agreement shall adopt a rehabilitation plan presented to them by the Board of Trustees of the San Diego County Cement Masons Pension Trust

Fund to avoid any potential employer surcharge, or in accordance with such other deadline as may be imposed by the PPA or other applicable statutes or regulations.

- D. The Trustees of the Pension Fund will develop a benefit/contribution formula that is designed to keep the Pension Fund in the GREEN ZONE as defined by the Pension Protection Act of 2006. Benefits increases will not be given that force the FUND out of the GREEN ZONE.
- E. The Trustees of the Pension Fund will adopt a rehabilitation plan per the Pension Protection Act of 2006 if the Funding Deficiencies require the Trustees to consider that option or an assessment of contributing employers.
- F. The Establishment of an Annuity Trust Fund Agreement between the Contractors and the Union may be initiated at any time during the life of this agreement by mutual consent.

SECTION 29 **VACATION TRUST**

- A. The Employers and the Union agree to establish the Southern California Cement Masons Vacation Savings Plan.
- B. The Contractor shall make payments in the amount designated in Appendix “C” of this Agreement for each hour worked by Employees or for which they receive pay, for all Employees covered by the terms of this Agreement to the Vacation Savings Plan.
- C. Vacation benefits shall be distributed in accordance with the rules and policies established under the Southern California Cement Masons Vacation Savings Plan. Administrative costs and interest income shall be allocated to each account in accordance with the established Plan rules and policies. The plan will cover sick pay benefits for all sick pay programs not exempted under Section 37.

SECTION 30 **SAN DIEGO CONSTRUCTION INDUSTRY ADVANCEMENT FUND**

The parties to this Agreement recognize that to protect and expand the interests of the Construction Industry, to be aware of means and methods of improving the efficiency of the industry and to protect the industry from harmful legislation whose impact is detrimental to both the employees and the Contractors and without regard to whether such employees are employed by members of Contractors, the individual employer will contribute the sum of 13 cents (\$0.13) per hour for all hours worked or paid for by all employees employed under the terms of this Agreement to the SAN DIEGO CONSTRUCTION INDUSTRY ADVANCEMENT FUND, an employer established and administered Trust formed and created for this purpose, and the individual employer hereby adopts and agrees to be bound by the terms of that certain Trust Agreement establishing the SAN DIEGO CONSTRUCTION INDUSTRY ADVANCEMENT FUND and further agrees to observe and be bound by the actions and determinations of the Board of Trustees of said Trust.

SECTION 31
CREW COMPOSITION AND SIZE

Crew composition and ratio by classification shall be designated at the discretion of the Employer consistent with past jurisdictional practices. An Employer may employ one (1) apprentice when one (1) cement mason journeyman is employed, consistent with the hours of employment required by Section 1777.5 of the California Labor Code.

SECTION 32
ADMINISTRATIVE DUES

- A. Subject to the following conditions, the Employers agree that they shall, if furnished with an Employee's written authorization to deduct the sum from the amounts required to be paid in Appendix "A" to this Agreement for each Employee covered hereby for each hour worked or paid for each payroll period as administrative dues. In implementing the foregoing, the parties recognize the Vacation/Dues Reconciliation Trust (hereinafter "Dues Trust") as agent for the purpose of receiving and holding written authorization cards for receiving, holding, allocating and distributing the supplemental dues monies.
- B. Said administrative dues shall be transmitted to the Dues Trust concurrently with, but not as part of, the Employer's monthly contributions with respect to his Employees covered by this Agreement. All sums deducted by the Employer pursuant to the provisions of this Section shall, from the instant of their deduction, be considered dues if proper authorizations shall have been furnished. All other sums transmitted by the employers pursuant to the provisions of this Section shall, from the instant of their transmittal, be considered vacation-holiday contributions if no such proper authorization shall have been furnished and shall be held by the Vacation Plan for the account of the Employee. Prior to deposit in a separate bank accounts of the Dues Trust, on the one hand, and accounts of the Vacation Plan on the other, these Trusts' bank shall separate the funds transmitted into dues and vacation-holiday contributions, respectively, based upon whether or not a proper dues deduction authorization shall have been filed. The bank shall then deposit such sums in the account Trust referred to in this Section. The Union shall bear the entire responsibility for furnishing the written authorizations referred to above. All costs incident to receipt, administration and remittance to the Union of the administrative dues payments shall be borne solely and entirely by the Union. This provision shall not reduce the obligations of the Employer to pay the full amount of vacation contributions specified in this Agreement. All written authorizations referred to above shall be irrevocable for a period of one year from the date of the execution and shall renew automatically from year-to-year thereafter, unless the Employee, by written notice served upon the Union and/or Dues Trust, as agent for the Employer, within fifteen (15) days following the first year or any year thereafter, revokes such authorization.

SECTION 33
ADA COMPLIANCE

The Union and the Employer recognize that significant legal obligations have been imposed on employers by the Americans with Disabilities Act (“ADA”). It is further recognized that the extent of these legal obligations, and the way, in which they must be met, is presently unclear. The Union agrees, on behalf of itself and employees it represents, to cooperate with the Employer to ensure that the requirements of the ADA are complied with. The Union further agrees that actions taken by the Employer in a good faith effort to comply with the requirements of the ADA will not be subject to the filing of a grievance under this Agreement. In the event of a charge against the Employer by or on behalf of an employment applicant or employee that his or her rights under the ADA have been violated, the Union agrees to fully cooperate with the employer to have information relating to the basis of the applicant’s or employee’s claim, and the remedies sought.

SECTION 34
GENERAL SAVINGS CLAUSE

It is not the intent of either party hereto to violate any laws, rulings or regulations of any governmental authority or agency having jurisdiction of the subject matter of this Agreement. The parties agree that, in the event any provision of this Agreement is finally held or determined to be illegal or void as being in contravention of any such laws, rulings, or regulations, they will promptly enter into lawful negotiations concerning the substance thereof. If any part or parts are held or determined to be void or illegal, the remainder of the Agreement shall remain in full force and effect, unless the parts so found to be void render the balance of the Agreement inoperable.

SECTION 35
APPRENTICESHIP TRAINING

- A. The Employers and the Union recognize the need for Apprenticeship Training and to this end indenture Apprentices in full conformity with Section 1777.5 of the Labor Code of the State of California governing employment of Apprentices upon public work. Apprentices shall be employed in accordance with the standards as established by the Southern California Cement Masons’ Joint Apprenticeship Training Committee. The Employers will appoint members to the JATC and participate in their activities.

- B. For all work the Employer may employ a ratio of apprentices to journeyman of not more than one apprentice to one journeyman, calculated at the end of the job. There must always be journeyman supervision of apprentices and it is never appropriate to have apprentices working without journeyman supervision. The minimum ratio of one (1) apprentice hour for each five (5) journeyman hours established by the Labor Code remains unchanged.

- C. The Employers shall contribute the amount designated in Appendix "C" for all work covered by this Agreement into the Southern California Cement Masons Joint Apprenticeship Training Trust Fund. Apprentice wages are listed on Appendix D.
- D. The parties agree that the Apprenticeship Trustees should spend the available apprenticeship monies for Apprenticeship Training as recommended by the JATC provided such recommendations are in accordance with the terms of the Trust.

SECTION 36
HEALTHY WORKPLACE/HEALTHY FAMILY ACT


A. "The parties hereto agree to the fullest extent permitted, the Master Agreement shall operate to waive any and all provisions of the Healthy Workplace Family Act of 2014, effective January 1, 2015, and shall supersede and be considered to have fulfilled all requirements of said Act as presently written and/or amended during the life of this Master Agreement."

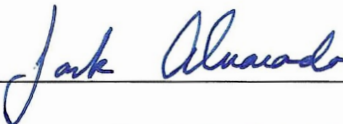
Agreed this 1st day of July 2022.

ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, SAN DIEGO
CHAPTER, INC.

OPERATIVE PLASTERERS' &
CEMENT MASONS'
INTERNATIONAL ASSOCIATION
LOCAL UNION NO. 500 / AREA 744

For its signatory contractor members

By  _____
Date: 8/3/2022

By  _____
Date: 08-02-2022

APPENDIX “A”
WAGE RATE

JOURNEYMAN CEMENT MASON

1. (For work performed on Type I, Type II construction projects)

| | | | |
|------------|----------------|--|---|
| Effective: | <u>7/01/22</u> | <u>7/01/23</u> | <u>7/01/24</u> |
| | \$4.30 | \$4.30 | \$ 4.30 |
| | | \$4.00 to base wage, \$0.30 to be allocated by union | \$4.00 to base wage \$0.30 to be allocated by union |

Raises allocated to: Base Wage = \$4.00; Health & Welfare = \$0.05; Pension = \$0.25

APPENDIX “B”
WAGE RATES

Journeyman Cement Mason

2. (For work performed as described in Section 26 hereof)

| | | | |
|------------|----------------|----------------|----------------|
| Effective: | <u>7/01/22</u> | <u>7/01/23</u> | <u>7/01/24</u> |
| | \$4.30 | \$4.30 | \$4.30 |

3. **Foreman Rate** +\$3.00 per hour (effective July 1, 2022)

APPENDIX “C”
FRINGE BENEFITS

(Applies to work performed under Appendix “A” & “B”)

EFFECTIVE 7/1/22

| | |
|-------------------|---------|
| Health & Welfare | \$8.43 |
| Pension | \$14.15 |
| Supplemental Dues | \$1.87 |
| Apprenticeship | \$0.60 |
| Vacation | \$4.50 |
| SDCIAF | \$0.13 |

APPENDIX “D”

4. Apprentice Wage Rates for Types I and II - Effective July 1, 2022

| Period | % | Base | Supp. Dues | Total |
|-----------------|---------------|-------------|-------------------|--------------|
| 1 st | 60% (of wage) | \$22.91 | \$1.87 | \$24.78 |
| 2 nd | 65% (of wage) | \$24.82 | \$1.87 | \$26.69 |
| 3 rd | 70% (of wage) | \$26.73 | \$1.87 | \$28.60 |
| 4 th | 75% (of wage) | \$28.64 | \$1.87 | \$30.51 |
| 5 th | 80% (of wage) | \$30.55 | \$1.87 | \$32.42 |
| 6 th | 90% (of wage) | \$34.37 | \$1.87 | \$36.24 |

Based on Wage Rate of \$38.19

Apprenticeship Fringe Benefits – Effective July 1, 2022

| 1st & 2nd Period | | 3rd, 4th, 5th, & 6th Period | |
|---|--------|--|---------|
| Health & Welfare | \$8.43 | Health & Welfare | \$8.43 |
| Apprenticeship | \$0.60 | Pension | \$14.15 |
| Supp. Dues | \$1.87 | Vacation | \$4.50 |
| Vacation | N/A | Apprenticeship | \$0.60 |
| SDCIAF | N/A | Supp. Dues | \$1.87 |
| | | SDCIAF | \$0.13 |

APPENDIX E

A. Arbitration of Employment Related Claims.

Any dispute, complaint or grievance alleging a violation of the Master Labor Agreement shall be processed through the Procedure for Settlement of Grievance and Disputes in Section 18 and the Local Union and Union shall retain sole and exclusive ability to bring such a grievance to arbitration pursuant such Section. In addition, any dispute, complaint or grievance concerning a violation of, or arising under, Industrial Welfare Commission Wage Order 16 ("Wage Order 16") which is subject to the Procedure for Settlement of Grievance and Disputes in Section 18 by operation of Wage Order 16 and exemptions contained therein for employees covered by collective bargaining agreements shall remain subject only to Section 18 and not this Appendix A. Disputes, complaints or grievances within the scope of this paragraph shall be referred to as "Contractual Disputes".

In addition to Contractual Disputes that may be brought by the Union or Local Union as described above, all employee disputes concerning violations of, or arising under Wage Order 16 (except as noted in the immediately preceding paragraph), the California Labor Code Sections identified in California Labor Code section 2699.5 as amended, the California Private Attorneys General Act (Labor Code section 2698, et seq.), and federal, state and local law

concerning wage-hour requirements, wage payment and meal or rest periods, including claims arising under the Fair Labor Standards Act (hereinafter "Statutory Dispute" or "Statutory Disputes") shall be subject to and must be processed by the employee pursuant to the procedures set forth in this Appendix A as the sole and exclusive remedy. To ensure disputes are subject to this grievance procedure in accordance with the intended scope of coverage set forth herein, Statutory Disputes also include any contract, tort or common law claim concerning the matters addressed in the foregoing laws (other than a claim of violation of the Master Labor Agreement which are deemed Contractual Disputes). This Appendix shall not apply to claims before the National Labor Relations Board, the Employee Equal Opportunity Commission, the Department of Fair Employment and Housing, and the California Division of Workers' Compensation.

B. Procedure for Arbitration of Disputes.

No Statutory Dispute subject to this Appendix A shall be recognized unless called to the attention of and, in the event it is not resolved, confirmed in writing by the individual employee to the individual Contractor and the Local Union within the later of (i) the time set forth in the Procedure for Settlement of Grievance and Disputes in Section 19 or (ii) the time provided for under applicable statute.

Grievances and arbitrations of all Statutory Disputes shall be brought by the individual employee in an individual capacity only and not as a grievant or class member in any purported class or representative grievance or arbitration proceeding. The Arbitrator shall have the authority to consolidate individual grievances for hearing but shall not have the authority to fashion a proceeding as a class or collective action or to award relief to a group or class of employees in one grievance or arbitration proceeding.

If the individual employee dispute is a Statutory Dispute subject to this Appendix A, the grievance shall not be heard by the Joint Adjustment Board but shall proceed directly to an independent Arbitrator. In such cases, the procedures for selection of an Arbitrator contained in Article VI shall not apply; instead, the individual employee and the Contractor shall proceed to arbitration pursuant and subject to the American Arbitration Association National Rules for Employment Disputes. The Contractor shall pay all fees and costs related to the services of the American Arbitration Association and the services of the Arbitrator; however, the Arbitrator may reallocate such fees and costs in the arbitration award, giving due consideration to the individual employee's ability to pay. Each party shall pay for its own costs, expenses, and attorneys' fees, if any. However, if any party prevails on a statutory claim which affords the prevailing party costs or attorneys' fees, or if there is a written agreement providing for an award of costs or attorneys' fees, the Arbitrator may award costs and reasonable attorneys' fees to the prevailing party. Any issue regarding the payment of fees of costs, and any disputes about the manner of proceeding shall be decided by the Arbitrator selected. The Local Union or Union shall not be a party to such and shall bear no costs or fees of the arbitration.

The Arbitrator shall have full authority to fashion such remedies and award relief consistent with limitations under federal and state law, and precedent established thereunder, whether by way of damages or the award of attorneys' fees and other costs, orders to cease and desist, or

any and all other reasonable remedies designed to correct any violation which the Arbitrator may have found to have existed, including such remedies as provided under applicable state or federal law or regulation. The decision of the Arbitrator is final and binding upon the parties and is enforceable in a court of competent jurisdiction.

The Arbitrator shall not have any authority to award relief that would require amendment of the Master Labor Agreement or other agreement(s) between the Union and a Contractor or the Contractors, or which conflicts with any provision of any collective bargaining agreement or such other agreement(s). Any arbitration outcome shall have no precedential value with respect to the interpretation of the Master Labor Agreement or other agreement(s) between the Union and a Contractor or the Contractors.

MEMORANDUM OF UNDERSTANDING PAID LEAVES

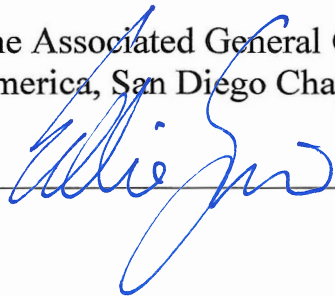
This Memorandum of Agreement is entered into this first day of July 2022 by and between "Union" and The Associated General Contractors of America, San Diego Chapter, Inc. to establish Trust Fund contribution obligations for government mandated sick and family leave requirements. The bargaining parties have agreed to the following terms and conditions for the reporting and payment of contributions on these hours:

1. The Memorandum of Understanding applies to mandated paid leave under a Federal, State, or Municipal law or ordinance.
2. For all hours paid, but not worked, by reason of compliance with the laws and ordinances referenced in paragraph 1 above, contractors shall not be obligated to make Trust Fund contributions on these hours with the exception of contributions to the Health and Welfare Plan.
3. The Administrator of the Funds shall establish an employer reporting for making Health and Welfare contributions only under this Memorandum of Understanding.

Union



The Associated General Contractors of
America, San Diego Chapter, Inc.



Date: 08-02-2022