

**CEMENT MASONS’  
AGREEMENT  
CEMENT MASONS’  
LOCAL UNION NO. 404  
2006-2011**

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## CEMENT MASONS' AGREEMENT

May 1, 2006 - April 30, 2011

THIS AGREEMENT made and entered into by and between CONCRETE CONTRACTORS' ASSOCIATION, CONSTRUCTION EMPLOYERS' ASSOCIATION of Cleveland, Ohio and AGC OF OHIO CLEVELAND DIVISION, being the party of the first part, herein called the "Employer" or "Contractor" and OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, LOCAL NO. 404, the party of the second part, herein called the "Union."

The term "Employer" shall be construed to include the Concrete Contractors' Association of Cleveland, Ohio; the Construction Employers Association of Cleveland, Ohio; the AGC of Ohio Cleveland Division, and each member of each of said associations, even though each of these associations and each of their respective members is a separate legal entity. The term "Employer" shall also include any contractor who has, in writing, authorized the Concrete Contractors' Association of Cleveland, Ohio and/or the Construction Employers' Association of Cleveland, Ohio and/or the AGC of Ohio Cleveland Division, to bargain on its behalf with the Union as hereinafter defined, and also any contractor who is not affiliated with any of the aforementioned associations or who has not authorized in writing, any of the aforementioned associations to bargain on its behalf, but who becomes bound in any manner to this Agreement.

The term "Employee" shall mean all persons who perform bargaining unit work as described in this Agreement.

The term "Union" shall mean the Operative Plasterers' and Cement Masons' International Association, Local No. 404 and its successors, and shall include its officers and members who are sometime referred to hereinafter as employees or Cement Masons.

WHEREAS, the parties hereto desire to stabilize employment in the building industry, agree upon wage rates and conditions of employment, and do away with strikes, boycotts, lockouts and stoppage of work, it is agreed that the provisions herein shall be binding upon both parties on building construction work in Cuyahoga County, Ohio.

### ARTICLE I

#### Production

**Section 1.01**—The Employer and Union, recognizing the necessity of eliminating restrictions and promoting efficiency, agree that no rules, customs or practices shall be permitted that limit production or increase the time required to do the work.

**Section 1.02** - No limitations shall be placed upon the amount of work which any employee shall perform during the working day, nor shall there be any restrictions against the use of machinery, tools or labor saving devices, nor against the use of any materials, raw or manufactured, except prison-made materials.

**Section 1.03** - Whenever mechanical straight edges, laser screeds, cement finishing machines and grinding machines, mechanical shake spreaders, or similar type machines or new equipment are to be used on any type of work coming under the jurisdiction of cement masons, it shall be operated by cement masons.

## **ARTICLE II Recognition and Work Jurisdiction**

**Section 2.01** - The Employer recognizes the Union as the exclusive bargaining agent on behalf of all employees performing the following work:

**Section 2.02** - The finishing of all concrete construction, such as buildings, bridges, silos, elevators, smoke stacks, curbs and gutters, sidewalks, streets and roads, paving alleys and roofs, of mass or reinforced concrete slabs and all surfaces of cement, rock asphalt, the laying and spreading and finishing of all types of bituminous concrete, including all types of Vacuum Mats used in the drying of cement floors in preparing same for finishing, the operation of all mechanical straight edges and all troweling or float machines whether walk behind or riding shall be work of the Cement Mason. The sandblasting of concrete and guniting work of handling a cement gun (when the work is one and one-half (1 1/2) inches in thickness or less), the handling and control of the nozzle shall be that of the Cement Mason. Mastic, epoxy or resilient flooring, when laid free hand. The preparation and patching of concrete floors, including the leveling and finishing of cementitious and epoxy material for corrective purposes shall be assigned to the Cement Masons on the basis of trade practice. Any dispute shall be settled in accordance with the Plan for the settlement of jurisdictional disputes in the construction industry. The finishing or washing of all concrete construction, using any color pigment when mixed with cement, in any other form — composition, magnesite rubbing or grinding, terrazzo, granitoid, mosaic and nail coat, whether done by brush, broom, trowel, float or any other process including operation of machine for scoring floors, or any other purpose they may be used for in connection with the Cement Masons' trade. The rodding, spreading, forming, finishing and tamping of all concrete and the spreading and finishing of all top materials, sills, coping, steps, stairs and risers, and running all cement, epoxies, magnesite, composition, oxide, chloride and plastic material 6" base or less shall be the work of the Cement Mason. All preparatory work on concrete construction to be finished, or rubbed, such as removal of nails, wires, wall ties, snap ties, regardless of method used, etc., patching, brushing, chipping and bush-hammering, rubbing or grinding if done by machine or carborundum stone of all concrete construction, setting of all strips, screed stakes and grades and curb forms. All glass set

in cement. The pointing and patching and caulking around all steel or metal window frames that touch concrete, and the grouting of door bucks and door frames. The laying and finishing of Gypsum Material Roof. All dry packing, grouting and finishing in connection with setting all machinery such as engines, pumps, generators, air compressors, tanks and so forth, that are set on concrete foundations. All dry packing and grouting of base plates on concrete. All prefabricated and prestressed concrete construction on the job site and in the shop, including the supervision of same, such as sidewalks, steps, floor slabs, beams, joists, walls and columns; also the screening, finishing rubbing, grouting, pointing, and patching the same. "The work of grading concrete with a rake when brought to grade when it is to receive additional material to be finished by the Cement Mason." The curing and sealing of finished concrete. Setting and nailing of all expansion strips and control strips for concrete construction, the tooling, stamping, cutting and sawing of joints and the filling of all joints.

**Section 2.03** - The waterproofing of all work such as Thoroseal, Ironite, Plasterweld and any similar products, regardless of the type of base these materials may be applied to.

### **ARTICLE III**

#### **The Plan for Settlement of Jurisdictional Disputes in the Construction Industry**

**Section 3.01** - Both parties to this Agreement agree to be bound by the terms and provisions of the Agreement creating the Plan. In particular, both parties agree to be bound by the provisions of the Agreement which states: Any decision or interpretation of the Plan shall immediately be accepted and complied with by all parties signatory to this Agreement.

**Section 3.02** - The parties hereto agree that in the event of a Jurisdictional Dispute with any other Union or Unions, the dispute shall be submitted to the Plan Board for settlement in accord with the Plan as adopted by the Building Trades Department, AFL-CIO.

**Section 3.03** - The parties here further agree that they will be bound by any decision or award of the Plan Board. There shall be no stoppage of work or slowdown arising out of any such dispute. No jurisdictional work stoppages and no jurisdictional picket lines shall be recognized.

### **ARTICLE IV**

#### **Union Security**

**Section 4.00** - New employees and employees not presently members of the Union who come within the coverage of this Agreement must make application for membership in the Union and become a member on or after eight (8) days following the beginning of such employment or the effective date of this Agreement, whichever is the latter:

provided further that the eight (8) day period shall consist of employment for such period by any contractors singly or in the aggregate.

**Section 4.01** - It is a continuing condition of employment with the Employer that Employees covered by this Agreement, both present employees and new employees, shall tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership in the Union.

**Section 4.02** - Persons losing their membership in the Union for failure to tender the periodic dues and initiation fees shall not be retained in the employ of the Employer provided that the Employer and/or the Association is first notified in writing.

**Section 4.03** -The Employer shall not be required to hire employees through the Union, or through its representatives, but may employ them direct, not less than fifty percent (50%) of the Cement Masons employed with the company within this jurisdiction must be from the membership of Cement Masons Local 404. Employees shall not be transferred from one Employer to another by the Union without the consent of the Employer for whom they are working; neither shall employees be transferred from one Employer to another without the consent of the Union.

**Section 4.04** - In the event the Employer makes request upon the Union to supply competent employees, sufficient in number to meet the needs of the Employer, the Union shall undertake to furnish such employees as may be reasonably available.

## **ARTICLE V Subcontracting**

**Section 5.01** - Prior to the commencement of work, the Employer shall not subcontract or assign any of the work covered by this Agreement and which is to be performed at the jobsite to any Employer, contractor, subcontractor or other person or party that is not signatory to this Agreement or who has not agreed in writing to accept all of the terms and conditions of this Agreement.

## **ARTICLE VI Grievance Committee and Procedure**

**Section 6.01** - It is specifically agreed that in the event any disputes arise out of the interpretation or application of this Agreement, excluding questions of jurisdiction of work. The same shall be settled by means of the procedures set forth herein. No such grievance shall be recognized unless called to the attention of the other party within ten (10) working days after the alleged violation was committed or become known.

**Section 6.02** - Any grievance or dispute arising between the parties to this Agreement shall be promptly adjusted through the following steps:

**A. First Step.** The aggrieved party shall first attempt settlement through the Union Steward or the Business Manager or Agent and the Job Supervisor. If the Union Steward or Business Manager or Agent and Job Supervisor are unable to resolve the grievance or if no settlement is reached within five (5) working days after the manner has been raised, the aggrieved party may process the grievance to the second step.

**B. Second Step.** Failing to settle the dispute at the First Step, the grievance shall be heard by the Union Business Manager or Agent and a top level management representative at a mutually agreeable date, not more than ten (10) working days after the conclusion of the First Step.

**C. Third Step.** Failing to settle the grievance at the Second Step, the grievance may be processed further by the grievance being reduced to writing and submitted to the Employer representative, who will be the Executive Director or his designee of the Concrete Contractors' Association of Cleveland, Ohio ("Association") and the Union representative, who shall be the Business Manager of the Union, of the Joint Grievance Committee (hereinafter "JGC"), and the Employer and Employee, if any, involved in a grievance. The Employer representative and the Union representative of the JGC shall schedule a date to hear the grievance within ten (10) working days from the date the grievance was submitted to the JGC. The JGC shall be composed of six (6) individuals, three (3) Employer representatives designated by the Association and three (3) Union representatives designated by the Union. Four (4) persons, two (2) Employer representatives and two (2) Union representatives shall constitute a quorum. The Employer and Union representatives shall have the same number of votes. After hearing the evidence, the JGC shall decide the grievance by majority vote. The decision of the JGC shall be issued within seven (7) working days of the hearing, and the decision shall be final and binding.

**a.** Any controversy, dispute or difference in respect to the interpretation of this Agreement, including questions arising out of compliance with this Agreement, as well as practices materially affecting the industry, may be submitted by properly authorized representatives of each party directly to the JGC for binding decision.

**b.** The parties obligate themselves to enforce the decision by the JGC including such damages, suspensions, expulsions, or other restrictions as the JGC may determine upon; provided, however, it is understood that the committee is not authorized to issue rulings which may be contrary to law or the constitution, laws and by-laws of each party, respectively.

c. One of the committee members shall serve as Chairman and he shall alternately be a Union or an Employer representative. During May, June and July inclusive, he shall be a Union committee person; and during August, September and October inclusive, he shall be an Employer committee person, alternating every three months thereafter. Each committee unit may have such counsel as it wishes and may call witnesses and other persons to appear before the committee. (It is recommended that each party shall attempt to have the same person serve as the committee chairman for the duration of each three-month period.)

d. Failure of a party to the grievance to appear before the JGC, after proper notice shall not prevent the JGC from hearing a case and issuing a decision.

**Section 6.03** – If the JGC fails to decide the grievance by a majority vote or if the JGC fails to meet within twenty-five (25) working days from the day the grievance was submitted to the JGC, the grievance may be submitted to arbitration. The request to proceed to arbitration must be sent to the Employer representative and the Union representative of the JGC and the Employer and Employee, involved in the grievance, if any, within fifteen (15) working days from the JGC decision. Upon receipt of the request for the arbitration, the parties shall endeavor to agree upon a mutually acceptable neutral arbitrator. If mutual agreement cannot be reached within seven (7) days after receipt of the request for arbitration, either party may request that the American Arbitration Association submit to the parties a panel of seven (7) arbitrators with National Academy credentials. The parties shall then alternatively strike names from the list of arbitrators until one name remains and that person shall be the neutral arbitrator.

In the event of the inability of the Employer and the Union to agree as to the nature of the issue between them, then the matter shall be referred directly to arbitration with the question of the issue to be resolved determinable by the Board of Arbitration. The decision of the arbitrator shall be final and binding upon both parties. The decision of the arbitrator shall not be contrary to, amend, add to, or eliminate any of the provisions of the Agreement. All costs for the arbitrator will be equally shared. Each side will bear its own costs.

## **ARTICLE VII**

### **No Strike - No Lockout**

**Section 7.01** - The Company shall not cause, permit, or engage in any lockout of its employees during the term of this Agreement.

**Section 7.02** -The Union shall not, authorize, cause, engage in, sanction, recognize or assist, nor will any employee take part in any slowdown, work stoppage, strike, sympathy strike, picketing, informational picketing, or other concerted interference against the Employer, or occurring at or around the company's office or work

locations during the term of this Agreement.

**Section 7.03** – No jurisdictional picket line shall be recognized.

**Section 7.04** - Nothing in this Agreement shall be construed to obligate members of the Union to work on the premises of any job which, in the opinion of the Union, is unfair to organized labor; provided further, they shall work only for recognized and qualified contractors or Employers who supply all material and labor, and who carry reliable compensation and liability insurance on their employees and conform to all municipal and state regulations pertaining to safety and health of employees.

**Section 7.05** – It shall not be a violation of this Agreement, and it shall not be a cause for discharge or discipline if any employee refuses to cross a legal picket line established by an International Union affiliated with the Building and Construction Trades Department of the AFL-CIO or a Local Union thereof.

## **ARTICLE VIII**

### **Work Hours**

**Section 8.01** - Eight hours shall constitute the regular workday between the hours of 8:00 a.m. and 4:30 p.m., except for the concrete sawman who shall be a Journeyperson Cement Mason. The Union will consider and review a special starting or quitting time on projects where job conditions are beyond the control of the Employer. Any change in the starting or quitting time or adjustment of the workday or work week, shall be a mutual agreement between the Employer and the Union. Employees shall be at their designated place of work for the full day. Forty (40) hours per week shall constitute a regular week's work. Employers may establish a uniform regular eight (8) hour work day on a per job basis for the next week between the hours of 6:00 a.m. and 4:30 p.m. with notice no later than the preceding Friday. All cement finishing crews shall start the scheduled work day at the same time. One-half (1/2) hour unpaid lunch period shall be scheduled from 11:00 a.m. and be completed by 1:30 p.m.

**Section 8.02** - Except as otherwise provided herein, all labor performed by an employee in excess of the regular workday, or in excess of the regular hours of the second and third shift respectively, shall be paid for at the applicable overtime rate.

**Section 8.03** - Lunch period - The lunch period shall be one-half (1/2) hour starting at 11:00 a.m. and completed by 1:30 p.m. In the event the job conditions do not allow one-half (1/2) of uninterrupted lunch period the worker shall receive time and one-half the straight time rate. Employees then shall take their 30-minute lunch period at the first available opportunity.

**Section 8.04** - The above provisions for the double time rate in the event of work in excess of regular shift hours, shall not apply to work on alterations or maintenance in buildings where the work cannot be performed during the day working hours without interruption of production; instead such overtime work, as well as all work performed from 4:30 p.m. on Fridays until 8:00 a.m. on Mondays shall be paid for at time and one-half rates: except for "holidays" as is otherwise provided for herein.

**Section 8.05** - The Union is to be notified in advance when the Employer wishes to claim the work to be "maintenance."

**Section 8.06** - Overtime

**A.** All overtime work performed Monday through Saturday shall be paid at one and one-half time the straight time hourly rate.

**B.** Work performed on Sundays and holidays shall be paid at two times the straight time rate.

**C.** There shall be no pyramiding of overtime rates and double the straight time rate shall be the maximum compensation for any hour worked.

**Section 8.07** – Holidays

**A.** The observed holidays shall be New Year's Day, Decoration Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**B.** There shall be no work on Labor Day except in special cases of emergency. If any of the above listed holidays fall on a Saturday or Sunday, the holiday(s) will be observed in accordance with the Federal Government.

**Section 8.08 (A)** - Benefit Payments of Overtime Hours - All payments of benefits on overtime hours shall be paid on hours paid. In cases where the contractor anticipates resistance, reluctance or objection on the part of the buyer of construction services, the Contractor has the option of discussing this matter with a representative of Cement Masons Local 404. If agreeable by both parties in writing, the payment of fringe benefits will be paid on hours worked and the monetary value of such fringes be added to the worker's paycheck.

**(B)** - Employers who elect to pay a bonus are not required to pay fringe benefits to those Employees who receive additional voluntary compensation.

**Section 8.09** - Any Cement Mason injured on the job requiring emergency treatment and unable to work shall be paid for the remainder of the day.

**Section 8.10** – The Employer agrees to make a good faith effort to furnish, within ten (10) days of request by the Union, completed forms as required by the State and/or United States Department of Labor for purposes of prevailing wage surveys by county. Requests by the Union to the Employer shall be limited to one project per year only and according to the Employer’s choice.

**Section 8.11 - (4-10s)** - The contractor shall have the option of scheduling work on a basis of four (4) ten (10) hours days Monday through Thursday except Friday can be scheduled as a makeup day, in the event of lost time due to inclement weather, material shortage or any other conditions beyond the Contractor’s control. When employees are scheduled to work on a four (4) ten (10) hour day schedule time and one half (1½) shall be paid for all hours over ten (10) in one day. The Contractor must notify the Union no later than the preceding Friday that a four (4) ten (10) hour work week will be implemented.

## **ARTICLE IX**

### **Saturday Make-up Day**

**Section 9.01** - Saturday will be worked at straight time plus \$1.00 premium per hour if a Monday, Tuesday, Wednesday, Thursday or Friday is lost during the work week due to inclement weather conditions (except where an observed holiday falls on a workday). Work in excess of eight (8) hours shall be paid at time and one-half the rate. Working a Saturday make-up day will be on a strictly voluntary basis. The Employer must notify the Union office and Employees by noon Thursday that Saturday will be make-up day or by noon Friday if Friday is the inclement weather day Saturday will be considered a normal work day with respect to all work rules. Preference for make-up day shall be given to Employees affected by the cancellation. The number of Employees working on Saturday may not exceed the number of working (or scheduled to work) on the job during the week. The Employer shall not discriminate against any Employee, in any manner because the Employee refuses to work a Saturday make-up day. If an Employee is called out for a Saturday make-up day, the worker shall receive a minimum of four (4) hours. If the Union believes that any Employer is abusing this Saturday Make-up Day provision, a grievance may be lodged against the Employer. If the Employer loses this grievance, that Employer shall lose its right to schedule Saturday Make-Up Days for the balance of the duration of the contract. This provision is restricted to two (2) jobsites per Contractor per week. This provision applies from October 1<sup>st</sup> through April 30th.

## **ARTICLE X**

### **Shift Work**

**Section 10.01** - When shift work is required, the Employer shall notify the parties to this Agreement at least twenty-four (24) hours in advance of the time cement masons are to start to work. The first shift shall work eight (8) hours at the regular straight time rate. The second shift will begin eight hours after the first shift and work seven and one-half (7 1/2) hours and receive eight (8) times the regular straight time hourly rate. The third shift will begin seven and one-half hours after the second shift and shall work seven (7) hours and receive eight (8) times the regular straight time hourly rate.

**Section 10.02** -When more than one (1) shift is to be used and the first starts under the options given the Employer under Article IX of this Agreement, then the second shift shall start eight and one-half (8½) hours after the first, shift and the third shift shall start, eight (8) hours after the start of the second shift.

**Section 10.03** — The day shift starting time for employees shall not be later than 8:00 a.m., except for the concrete sawman who shall be a Journeyman Cement Mason. The Union will consider and review a special starting or quitting time on projects where job conditions are beyond the control of the Employer. Any change in the starting or quitting time or adjustment of the workday shall be by mutual agreement between the Employer and the Union.

**Section 10.04** - Work performed otherwise during the employee's regular shift as provided herein, and during the employee's lunch time shall be paid for at the applicable overtime rate.

**Section 10.05** - When shift work is being performed, the work week shall start with the beginning of the first shift on Monday and end at the conclusion of the third shift on Saturday.

**Section 10.06** - No work shall be left to be unfinished after 8:00 a.m. on the following day, unless three (3) shifts have been employed, except where adverse weather conditions exist (adverse weather meaning rain or snow). The Employer must provide sufficient heat and light when work is to be finished.

**Section 10.07** - A foreman will be employed on each shift. When shift work is in force, the crew size and the work of the shift shall be decided jointly by the Foreman and the Employer.

**Section 10.08** – No Cement Mason shall work alone on any shift or overtime.

**Section 10.09** – Adequate light shall be provided both for safety and working conditions.

## **ARTICLE XI**

### **Rate of Pay**

**Section 11.01** - Effective May 1, 2001 the journeymen rate of wages to be paid by the Employer in the classifications of work herein shall be \$33.08 per hour.

**Section 11.02** - During the five-year period of this Agreement (May 1, 2006- April 30, 2011) the wage will be adjusted as follows:

May 1, 2006 - \$1.10/hr.

May 1, 2007 - \$1.10/hr.

May 1, 2008 - \$1.10/hr.

May 1, 2009 - \$1.10/hr.

May 1, 2010 - \$1.15/hr.

**Section 11.03** - In the event a worker reports on a job at a time specified by the Employer, but is not put to work, the worker is to receive two (2) hours pay at straight time, providing weather is such that work can proceed. If a worker reports to work at the time specified by the Employer and is not put to work until a later hour, he is to be paid at the regular rate for all waiting time with a one (1) hour minimum. If a worker reports at the time specified by the Employer and is not put to work due to weather, he is to be paid at the regular rate, including benefits, for a one hour minimum. If a worker works four and one-half (4 1/2) hours past the starting time, he is to be paid eight (8) hours pay, except for adverse weather. If the Employer notifies the worker by telephone or in person not to report to work, then the worker shall not be entitled to reporting pay under this provision.

**Section 11.04** - When the Union is called for employees after 8:00 a.m., or employees are called for work after 8:00 a.m., the pay for such employee shall begin at 8:00 a.m. This shall not apply when workers are called out for late shift work.

**Section 11.05** - When an Employer calls for an employee to work outside of the area of jurisdiction of this agreement, and then finds out they cannot send him out, said employee shall receive one (1) day's pay unless notification is made by 1:30 p.m. the preceding day.

**Section 11.06** - Employees shall be paid once each week in currency; provided, however, that any Employer furnishing a payroll security bond (either a single bond or joint Employers' bond) to the Union may pay his employees by check.

**Section 11.07** - All employees shall be paid on the day of the week designated as payday by the Employer. No more than three (3) days' pay in any event shall be held back from the regular work week.

**Section 11.08** — Payroll checks shall have a wage statement attached to each check, and currency shall be in a sealed envelope, which shall have a wage statement on its face. The wage statement shall show total hours worked during that pay period; the rate of pay and all legal deductions shall be itemized separately. The wage statement shall also show the date of the end of the pay period.

**Section 11.09**—Payment of wages shall begin no later than the regular quitting time and shall be completed within ten (10) minutes after such regular quitting time. Pay shall be allowed any employee from quitting time who has not been paid within ten (10) minutes after such quitting time. When employees are laid off, they shall receive their money in full on the job or else receive travel time to the Employer's office. When employees are laid off they either shall receive their pay in full one-half (1/2) hour before quitting time or the Contractor can mail the check within two (2) working days if their main office is located within the Union's jurisdiction. If the postmark is stamped beyond the two working days the Contractor shall pay the employee four (4) additional hours. When employees have to wait for their wages, they shall receive pay for all waiting time not to exceed two (2) days in any event. When an employee quits, then if he does not receive his pay directly or on the regular payday, the Employer shall forward his pay (cash or check) to the Union office in time to be available there no later than the Saturday morning following the end of the payroll period of the quit.

**Section 11.10** - Travel Expense - There shall be no travel expense allowed for employment the area of jurisdiction of this Agreement. Traveling expenses outside the area of jurisdiction of this Agreement shall be negotiated between the Employer and Employee on a uniform basis.

**Section 11.11** - No employee shall be paid under the scale negotiated. If an employee is paid a guaranteed weekly wage, the employee shall be paid at least the prevailing scale. If an employee is classified a foreman or general foreman, he shall be paid the scale negotiated. When an employee works overtime, an employee shall be paid the applicable overtime rate whether he is classified as a foreman or a general foreman.

**Section 11.12** - Employer shall pay an amount not to exceed five dollars (\$5.00) with receipt, per day per worker when no free parking is provided within one-fourth (1/4) mile of the jobsite.

**Section 11.13** - The Employer shall, after 9:00 a.m. and before 10:00 a.m., at a time convenient to himself, grant to the employees a coffee break at their designated work stations that shall not exceed five (5) minutes in length. There shall be no stoppage of work exceeding five (5) minutes.

**Section 11.14** - It is further agreed if any fringe benefit including JAC contributions would be terminated in the future, the amount allotted for same would be added to wages.

**Section 11.15** - The Union may divert a portion of this money to the Health & Welfare Fund or the Defined Benefit Pension Plan fund as recommended by the Board of Trustees of the respective funds.

**Section 11.16** - The Union may divert a portion of this money to the Operative Plasterers' and Cement Masons Profit Sharing Annuity Plan, the Cement Masons Local 404 Vacation Plan and any other program currently in the parties' Collective Bargaining Agreement, upon thirty (30) day written notice from the Union to the Association and the subsequent agreement of the Association which agreement shall not be unreasonably withheld. A diversion of money to a new program requires an Agreement between the Union and the Association.

**Section 11.17** (Traveling Contractor) - Employees covered by this agreement sent to projects outside of the area covered by this agreement shall be paid at least the wage scale and benefit contributions specified in this agreement, but in no case less than the established minimum wage scale of the OPCMIA local agreement covering the territory in which the work is being performed plus all contributions specified in the job site local agreement. Contributions will be made pursuant to the jobsite local agreement provided there is reciprocity with the Union and its Funds; otherwise contributions will be made directly to the Union and its Funds and not to the jobsite local union. The employer shall in all other matters be governed by the provisions established in the jobsite local agreement except for any provision requiring the employer to pay local union employees the same as traveling employees who are working pursuant to this provision or requiring the employer to sign the local agreement. If employees are sent to work on a project in an area where there is no agreement covering the work, they will work subject to terms and conditions of this agreement. The Employer may pay employees traveling pursuant to this agreement a weekly or daily subsistence and/or bonus which shall not be subject to fringe benefit contributions. This provision does not grant the Union any jurisdiction in areas outside of the area covered by this agreement.

**ARTICLE XII**  
**Bonding and Delinquency Procedure for All**  
**Contributions and Deductions**

**Section 12.01** – The Employer shall contribute to the Cement Masons Local No. 886/404 Pension Plan (“Pension Plan”) the proper amount as determined by this collective bargaining agreement and the most current letter from the local governing the allocation of fringe benefit contributions (minus any deductions required by the last sentence of this paragraph.) Overtime contributions shall be one and one-half (1 1/2) times the pension contribution for regular overtime work and two (2) times the pension contributions for Sunday and holiday overtime work. Prior to the payment of these Employer contributions to the Pension Plan, the administrative manager shall deduct from the aggregate amount of contributions, the amount of the Employer contribution to the Excess Benefit Plan described in the next paragraph and shall remit such amount to the Excess Benefit Plan. Subject to the receipt of a favorable ruling from the Internal Revenue Service, the parties shall establish, implement and maintain the Cement Masons Local 886/404 Excess Benefit Plan (“Excess Benefit Plan”) and its related Agreement and Declaration of Trust. On a monthly basis, the administrative manager of the Pension Plan shall determine the amount to be paid to the Excess Benefit Plan beneficiaries in the following months, said amount being the monthly defined benefit in excess of the payment permitted under Section 415 of the Internal Revenue Code. Said amount shall be further increased to reflect (1) the payroll taxes due from an employer under Section 3111 of the Internal Revenue Code (“FICA taxes”) with respect to such benefits, (2) the Federal Unemployment Tax Act taxes (if any) due from an Employer under Section 3301 of the Code with respect to such benefits and (3) administrative expenses relating to the administration of the Excess Benefit Plan. Benefit payments to each of the Excess Benefit Plan beneficiaries will be first paid from the Pension Plan in the amount as restricted by Section 415 of the Code and then supplemented by the amount determined to be payable to the beneficiary from the Excess Benefit Plan. Such further policies and procedures necessary to the operation and administration of the Excess Benefit Plan and not inconsistent with the provisions of this Section 12.01 shall be adopted by the Trustees of the Excess Benefit Plan with the advice and counsel of their professional advisors. The effective date of the foregoing provisions that relate to the Excess Benefit Plan shall be the effective date of the Excess Benefit Plan, as determined by the trustees thereof.

**Section 12.02** - The Employer also agrees to contribute to the Cement Masons’ Local 886/404 Pension Fund, Ohio Conference of Plasterers’ and Cement Masons’ Health & Welfare Plan, Operative Plasterers’ and Cement Masons’ Profit Sharing Annuity Plan, and the Cement Masons’ Local 404 Joint Apprenticeship and Training Trust Fund the proper amounts as determined by this collective bargaining agreement. Overtime contributions shall be one and one-half (1 1/2) times the pension contribution for regular overtime work and two (2) times the pension contribution for Sunday and holiday overtime work.

**Section 12.03** - The Employer, in addition to the abovementioned payments, shall deduct and pay into the Cement Masons’ Local 404 Savings Fund, an amount

determined by the Union and Association per hour for each hour paid to employees in the area covered by this Agreement. When an employee works overtime the amount to be paid into the Savings Fund shall be either 1 1/2 or 2 times the regular amount for all overtime hours worked. Upon request, the Savings Fund money shall be available on July 1 and payable in full in December.

**Section 12.04** - The payments made to the Funds in accordance with the terms of this Agreement shall be sent with the appropriate reporting form to the designated depository when due. In reporting periods in which the Employer did not have any Employees working, he shall submit a reporting form marked "NO EMPLOYEES WORKING." If the Employer has completed all work in the jurisdiction covered by this Agreement and will not have Employees working in the jurisdiction thereafter, he shall note on the reporting form for his last reporting period "WORK COMPLETED FINAL REPORT".

**Section 12.05** - The failure of an Employer to pay the contributions, payroll deductions, delinquency assessments or other monies required hereunder by the 15th day of the month following the month for which contributions are due, shall be a violation of this Agreement as well as a violation of said Employer's obligations under the agreements and declarations of trust. Nonpayment by an Employer of any contributions, payroll deductions, delinquency assessments or other monies when due, shall not relieve any other employer of the obligation to make payment of same when due. In the event that an Employer submits a check for payment to the Funds and it is returned by his bank stamped "Insufficient Funds" said check must be replaced and the Trustees may require that future payments must be made by either certified check, cashiers check or money order.

**Section 12.06** - An Employer who is delinquent in making payments herein required or who fails to send the reports on time, shall be assessed as liquidated damages, a delinquency assessment of ten percent (10%) of the total amount due plus one and one-half percent (1.5%) of the total due per calendar month thereafter.

**Section 12.07** - Whenever an Employer is delinquent, the Funds Administrator or it's designee shall, notify the Surety Company which supplied the bond for that Employer of the fact of said delinquency and shall at the same time send a copy of such notice to the Association and Union.

**Section 12.08** - Whenever an Employer is delinquent, the Union may, upon seventy-two (72) hours written notice to the delinquent employer, withdraw Employees from the employment of the Employer, until such amount as are due and owing are paid, without such withdrawal being considered a breach of any of the provisions of this Agreement. Each Employer agrees to permit an audit or examination of such books, records, papers or reports of the Employer as may be necessary in the discretion of the Trustees of the

Fund, to determine whether the Employer is making full and prompt payment of all sums required to be paid to the Funds. The audit of examination shall be performed by an auditor or agent designated by the representative of the Funds. If, as a result of said audit or examination, an intentional substantial deficiency in payments to the Fund is discovered, the Fund may assess its costs in performing the audit or examination to the Employer, and said cost shall be collectible as any other amount due from the Employer to the Funds. If a signatory contractor fails to provide a payroll bond the Union may upon a seventy-two (72) hour written notice withdraw employees.

**Section 12.09** - The respective Trustees of the Funds, and their successors in office, shall be deemed to be the joint and several beneficiaries of this Agreement, for the purpose of enforcing the provisions of this section of the Agreement and shall, in addition to and with or without the Union, have standing to sue on this Agreement to enforce the terms hereof and of the respective agreements and declarations of trust and/or other governing instruments of the Funds and the payment by any Employer of all sums and contributions due to the Funds. A delinquent Employer shall also be liable for and obligated to pay the delinquent assessments provided for herein, reasonable interest, all court costs, attorney's fees and other expenses incurred in the collection of contributions due from said delinquent Employer. The Trustees shall further have all such other relief (including temporary and permanent injunctive relief) and remedies against a delinquent Employer to which they may be entitled at law or in equity. The Trustees may compel and enforce the payment of contributions in any manner, which they deem proper, and the Trustees may make such additional rules and regulations to facilitate and enforce the collection and payment hereof as they may deem appropriate.

**Section 12.10** - An Employer not presently a member of the Association who does not have two consecutive years as a nondelinquent contributing employer shall be required to make all payments referred to in this Article on a weekly rather than a monthly basis until said Employer shall establish a two consecutive year record as non-delinquent contributing employer. Any Employer who shall become thirty or more days delinquent in making fringe benefit payments required by this Agreement shall be required to make all payments and reports referred to in this Article on a weekly rather than monthly basis until said Employer shall have established a full one-year record as a non-delinquent contributing Employer.

**Section 12.11** - An Employer shall secure a payment bond from a bonding company licensed to do business in Ohio. The surety bond must provide that it may not be terminated without sixty (60) days prior written notice to the Union. Employees will not be provided to an Employer who does not have on file a current surety bond satisfying the conditions of this Article. This bond shall be deposited with the fringe benefit office, the Ohio Conference of Plasterers and Cement Masons Health & Welfare Fund. The bond shall be approved by the Trustees or their designee according to the following schedule:

**Employees Employed at Bonding Date Face Value of Bond**

Up to five (5) Employees \$25,000.00. Add per each additional five (5) Employees or a fraction thereof \$25,000.00.

The bond shall secure payment of all monies due by the Employer either as contributions or deductions, and will additionally secure payment of liquidated damages, interest, attorney fees, and any other fees and costs that may be incurred in the collection of monies due. The bond amounts as required herein may be reduced fifty percent (50%) if weekly payments of the fringe benefits are made in accordance with the terms and conditions as approved by the fringe committee responsible for such collections.

**Section 12.12** - The Union agrees to provide the Executive Vice President of the Construction Employer's Association a listing of all Employers who have posted bonds and shall keep such list current by regular notification of additions and deletions.

**ARTICLE XIII  
Voluntary Check-Off of Dues**

**Section 13.01** - The Employer shall deduct a percentage of gross wages earned from journey person and apprentice wages for dues check-off for every employee covered by this Agreement who has executed a check-off authorization card in a form approved by the parties. The percentage deducted will be determined by the Union and sent by written notification to the Employer thirty (30) days in advance. The amount so deducted during each calendar month shall be transmitted by each Employer to the Cement Masons Local 404 no later than the fifteenth day of the month following the payroll period ending of the previous month.

**Section 13.02** - The Union agrees to hold the Employer harmless for its compliance with such notification and the deduction of such monies.

**Section 13.03** - The Union will provide the Construction Employers Association with signed authorization cards from its members which permit the Employer to make said deductions.

**Section 13.04** - Deductions on the basis of authorization cards shall commence for the month in which the Employer received the authorization card or in which such card becomes effective, whichever is later.

**ARTICLE XIV  
Foreman**

**Section 14.01** - The foreman shall receive seventy-five cents (\$.75) per hour above the Journeyperson rate. However, the General Foreman shall receive one-dollar (\$1.00) per hour over Journeyperson rate.

**Section 14.02** — Such foreman shall be a United States citizen as selected by the Employer and under the Employers' sole discretion.

**Section 14.03** - Further, where two (2) or more employees are placed on a job with complete discretion as to the work, then one of such employees shall be entitled to pay as a foreman. Where there are ten (10) or more employees on the same job, then at least one (1) of them shall be a general foreman and at least one (1) shall be a foreman.

**Section 14.04** - On all jobs requiring ten (10) or more Cement Masons, there shall be a general foreman and a foreman.

**Section 14.05** - The Cement Masons shall have control of the pouring of concrete to be finished subject to instructions by the job superintendent.

**Section 14.06** - A Cement Mason shall not be required to take orders from anyone other than his foreman or the job superintendent.

**Section 14.07** - Each project shall have a foreman who shall be a member in good standing of Cement Masons' Local No. 404.

## **ARTICLE XV Stewards**

**Section 15.01** - The first Journeyperson on the job shall be the steward, pending selection of the steward by the Business Agent from the workers on the job. The steward shall not be transferred from job to job, or discharged without just cause without first notifying the Union. The steward shall not be discriminated against for performing their duties as a steward. The steward shall share overtime. The steward shall have sufficient time to perform his duties during working hours. The steward shall be on the job at all time that work is being performed. If two (2) or more workers remain on the job, one shall be the steward. If the steward is sent home or is told to stay home when there are two (2) or more workers on the project, they shall receive a day's pay.

## **ARTICLE XVI Apprentices**

**Section 16.01** - In order to maintain a sufficient number of skilled mechanics in the building industry, the necessity for the employment and training of apprentices is hereby recognized, and the employment of as many apprentices as is reasonable and

practical shall be encouraged by the Employer and Union. No apprentice shall be allowed on a job unless the apprentice is a third-year without a journeyman on the job.

**Section 16.02** – A Joint Apprenticeship Committee consisting of three (3) representatives of the Employer and three (3) representatives of the Union shall be appointed to meet to study the situation and to make such recommendations as may be warranted in their opinion.

**Section 16.03** - During each of the period herein set forth, Apprentices shall be paid as follows:

First Year.....50%  
Second Year.....65%  
Third Year.....75%

After April 30, 2002, contact the Union office for current apprentice wage rates.

**Section 16.04** - The term of apprenticeship shall be three (3) years (3,600 hours) including the probationary periods and a minimum of 144 hours per year of related instruction. One year is generally considered to be 1,200 hours of on-the-job training.

**Section 16.05** - Where there are five (5) or more journey people employed by a contractor in the jurisdiction of this Agreement, there shall be one (1) apprentice for every five (5) workers. The contractor may employ one (1) apprentice for every two (2) journey people if the apprentices are available. An apprentice must be placed, if available, at the discretion of the Joint Apprenticeship Committee.

**Section 16.06** - The Employer must be in business for at least two (2) years before he is entitled to an apprentice. When lay-offs occur, the ratio of apprentices to journey people existing prior to layoff will be maintained.

**Section 16.07** - The parties agree to take any necessary steps to meet EEO requirements.

**Section 16.08** - Effective May 1, 2001 each employer shall contribute to the jointly administered Apprenticeship Fund forty-three (\$.43) cents for each straight time hour worked; sixty-four (\$.64) cents for each time and one-half overtime hour worked and eighty-six (\$.86) cents for each double time overtime hour worked.

**Section 16.09** - Of the forty-three (\$.43) cents per hour, twenty-six (\$.26) cents shall be a contribution from the employer and seventeen (\$.17) cents shall be a deduction from the hourly wage.

**Section 16.10** - All apprentices employed by a signatory contractor must be registered to Cement Masons' Local 404 JATC Committee.

## **ARTICLE XVII Working Rules**

**Section 17.01** - Means shall be provided for taking care of clothes and tools of employees.

**Section 17.02 - A.** The Employer shall furnish straight edges (5/4 stock) darby, kneeboards, one employee — two (2) handle scrapers.

**B.** The Employer shall also furnish specialty tools, rain gear, chisels, chipping hammer, 11/2 pound mash hammer, brick hammer or hatchet, carborundum stones and brushes and shall sharpen same; provided, that employees shall be charged for the tools mentioned, if lost while in their care.

**C.** In case of fire on a job, the Employer shall be responsible for the loss of the mechanic's tools and clothing lost in such fire. Proof of loss is required.

**Section 17.03** - Whenever practical, upon starting a job, Employers shall furnish a suitable room for the use of the Cement Masons to be kept clean at all times and heated in cold weather. The room in which tools of the Cement Masons are kept shall be provided with a substantial lock.

**Section 17.04** - Employees shall have their clothes changed, ready to start work, at starting time. Lunch time shall be computed as of the time the men are in the shanty; also, they shall be in the shanty by quitting time. It is the intent of the parties that there be a full day's work for a fair day's wage.

**Section 17.05** - It is recognized the Employer shall have the exclusive right of safety, health and protection measures on all job sites.

**Section 17.06** - No person shall interfere with employees during working hours. The Business Agent of the Union may consult with the steward, employer or employees on the jobsite pertaining to a specific grievance.

**Section 17.07** - A Cement Mason shall be present at the start of all finished floor pours. The tops of walls are to be finished by Cement Masons.

**Section 17.08** - Employees who work as Cement Masons under this Agreement shall not be required to perform any work on the same job, which is outside such craft jurisdiction as defined herein, nor the work of any other craft.

**Section 17.09** - Straight edges, pulled by one employee, shall not exceed twelve (12') feet in length.

**Section 17.10** - All exposed industrial and commercial concrete floors required to be hard troweled, shall be troweled by hand at least once behind the troweling machine.

**Section 17.11** - The Employer shall furnish potable drinking water and make sanitary paper cups available and such shall be available to all Employees at all times.

**Section 17.12** - The Employer must provide sufficient heat, and light when work is to be finished.

**Section 17.13** - It shall be a condition of this Agreement that all Employers shall comply with the safety provisions set down in IC-3 of the Safety Code of Ohio. It shall be a condition of employment that all employees provided with hard hats shall wear such hard hats from the time they arrive on the job site until they depart and to wear eye protection where required and any other safety equipment may be furnished by the Employer and practice the safety procedures specified by the Employer in the State Safety Code. All equipment shall remain the property of the Employer and shall be returned to the Employer.

**Section 17.14** - No Cement Mason shall be required to work near any mechanical heating device or open flame which is injurious to the health of a tradesman. Salamanders, in particular, must be vented to a flue or outside opening.

## **ARTICLE XVIII**

### **Work Standards**

**Section 18.01** - The Union may request and hold a job conference with the Contractor to achieve the intent of this Agreement. Said conference must be held within three (3) working days of the request.

**Section 18.02** - It is recognized that an important feature of this Agreement is the maintenance and good and proper quality of workmanship the industry; and in particular, no Employer is to be permitted to sacrifice these aims and requirements in order to reduce working time or costs; provided, however, that compliance with specifications of the prime or general contractor or architect, as well as the requirements of local and other governmental bodies shall be regarded as a prima facie showing of

good faith in this regard; and further, the maintenance of sound work standards shall be given active and regular consideration by the grievance committee.

**Section 18.03** - When a Cement Mason is instructed to leave work which he considers below standard, he shall notify the Union who, in turn, shall immediately notify the Employer, in writing. In any event it shall be the Employers responsibility and not the Union's.

**Section 18.04** -The parties express the intention that the grievance committee shall from time to time put into written form their various determinations relative to the matter of good and proper work standards.

## **ARTICLE XIX**

### **Construction Industry Service Program**

**Section 19.01** – Association Employers subject to the terms of this Agreement who employ Cement Masons and apprentices within the jurisdiction of Cement Masons Local No. 404 of Cleveland, Ohio shall abide by all terms and conditions of the Construction Industry Service Program as follows:

**Section 19.02** - A Declaration of Trust shall be prepared by the Construction Employers' Association and copies shall be available for inspection by the parties or other interested persons at the office of CEA. Said Trust shall be deemed a part of this Agreement.

**Section 19.03** - Each Association Employer covered by this Agreement shall pay to said Trust the amount determined by the Construction Employers' Association. When an employee works overtime the amount to be paid shall be either one and one-half (1 1/2) or two (2) times the regular amount for all overtime hours worked.

**Section 19.04** - The purposes of the Trust shall be to promote the common good of the construction industry in the Greater Cleveland area by providing financial support for various activities such as:

- A. Payment of management's cost in connection with joint apprenticeship programs in the construction industry.
- B. Payment of management's expenses in creating, operating and maintaining of additional educational and training facilities for the benefit of the construction industry and its employee.
- C. Payment of expenses for the improvement of safety practices in the construction industry in the greater Cleveland area.

D. Payment of management's expenses in connection with the administration of activities jointly administered with unions in the construction industry in the Greater Cleveland.

E. Payment of expenses in connection with the establishment of a public relations program for the benefit of the construction industry in the Greater Cleveland area.

F. Payment of expenses in connection with the collection and distribution of wage and related data to all segments of the construction industry in the Greater Cleveland area to insure conformity by all Employers with the terms and conditions of such wage agreements.

G. Payment of management's expenses for the maintenance of the office facilities and personnel engaged in the activities of the Construction Industry Service Program.

**Section 19.05** - It is understood that the Construction Industry Service Program Trust Fund shall not be used for lobbying in support of anti-labor legislation of any kind at municipal, state or national levels or to subsidize any contractor or contractor association in connection with any work stoppage or strike or to pay employer expenses in connection with negotiation of labor agreements.

**Section 19.06** - The Trustees of said Program shall comply with all present and future Federal laws governing the same.

**Section 19.07** - Payments shall be in accordance with such instructions and on such forms as are furnished by the Trustees. Delinquent contributors shall be subject to such penalties as the Trustees may prescribe from time to time.

**Section 19.08** - In accordance with OSHA Safety and Health Standards (29 CFR 1926/1910) requiring safety training and education, the Union shall provide to each cement mason a thirty (30) hour safety training program certified by the U.S. Department of Labor. The thirty (30) hours of safety training must be completed within the twenty-four (24) months of the current collective bargaining agreement. If upon notification to the Employer that the training has not been completed, appropriate disciplinary action shall be taken. All new cement masons hired by the Employer, after the twenty fourth (24<sup>th</sup>) month of the current collective bargaining agreement, must begin the training within forty-five (45) calendar days and complete the training within ninety (90) calendar days. Failure to complete the training within the ninety (90) days shall result in appropriate disciplinary action.

**Section 19.09** - Any Employer who does not to pay Construction Industry Service Program (CISP) contributions when performing work under the General President's Agreement or National Maintenance Agreements, shall contribute a like amount to the Cement Masons' Local 404 Joint Apprenticeship and Training Fund.

**ARTICLE XX**  
**Non-Discrimination**

**Section 20.01** - The Employer and the Union agrees that the hiring and employment of Cement Mason employees shall be nondiscriminatory and without regard to race, color, religion, national origin, ancestry, age or sex.

**Section 20.02** - The Employer and the Union shall fully comply with all applicable Federal and State laws pertaining to equal opportunity to employment.

**ARTICLE XXI**  
**Joint Labor - Management Uniform  
Drug/Alcohol Abuse Program**

**Section 21.01** - This Agreement incorporates by reference the special program entitled "Joint Labor Management Uniform Drug/Alcohol Abuse Program" as if it were written herein. A copy of this program is available from the Union office of Operative Plasterers and Cement Masons International Association Local No. 404 or the employers office of Construction Employers' Association.

Section 21.02 - It shall be the responsibility of the Employer to maintain compliance with the CISAP Policy. The Employer agrees to supply the Union with the name of the "need to know" person within their office and a written request to only refer cement masons that have a current drug free card. The Union shall be responsible to forward the eligibility status of all cement masons to the Employers' "need to know" person as often as requested. Any cement mason who does not have a current drug free workplace card must obtain such within ten (10) days of being notified. Failure to comply will result in appropriate disciplinary action. Furthermore, Employers shall not assign any individual to serve as a foreman, general foreman or superintendent to exercise supervisory authority over cement masons unless such individual also demonstrates compliance with the CISAP Policy.

**ARTICLE XXII**  
**Conditions, Practices or Customs**

**Section 22.01** - If any word, clause, sentence, paragraph or part of this Agreement shall for any reason be determined by a proper authority to be invalid, such determination shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or parts thereof directly involved in the controversy in which such determination shall have been made.

**Section 22.02** - The parties shall meet within thirty (30) days to negotiate language to replace the language to be invalid.

### **Article XXIII Salary Continuation**

**Section 23.01** - Medical Clearance – Any Employee who is injured on the job and loses time shall, upon return to work, present a statement signed by the treating physician that he/she is fully capable of performing the work of the trade. Said statement shall be presented to the first Employer for which said Employee works after the lost time.

**Section 23.02** - Salary Continuation –

- a) An Employer may offer injured workers, eligible for Ohio Workers' Compensation's temporary total compensation benefit, salary continuation/wages in lieu of temporary total compensation. No injured worker shall be required to accept salary continuation/wages in lieu of temporary total compensation.
- b) Weekly salary continuation/wages shall consist of an amount equal to forty (40) hours times the contractual straight time hourly rate, less any deductions required by law. Said weekly amount may be prorated to a daily amount in the week that the Employee goes off temporary total compensation. Since the Employee shall provide no services for said payment or perform any bargaining unit work, the Employer shall not pay any fringe benefit contributions other than health and welfare on the salary continuation/wage payments.
- c) The Construction Employers Association shall prepare a form, to be approved by the Union, which shall be used by any signatory Employer desiring to offer an injured workers salary continuation/wages. Said form must be signed by the Employer and injured worker and copies returned to the Association and Union.

### **ARTICLE XXIV Constitutionality of Agreement**

**Section 24.01** - If any word, clause, sentence, paragraph or part of this agreement shall for any reason be determined by a proper authority to be invalid, such determination shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or parts thereof directly involved in the controversy in which such determination shall have been made.

**Section 24.02** –The parties shall meet within thirty (30) days to negotiate language to replace the language to be invalid.

## **ARTICLE XXV TERMINATION**

**Section 25.01** — This Agreement shall become effective as of May 1, 2001 and will continue in full force and effect until April 30, 2005, with the following provisions and exceptions:

**A.** This Agreement may be reopened for negotiations sixty (60) days prior to May 1, 2005.

**B.** This Agreement will continue in full force and effect from year to year after May 1, 2001 as provided for in sections two (2) through four (4) below unless an Employer or the Union desires to modify or terminate this Agreement and notifies the other party in writing of its desire to do so at least sixty (60) days prior to May 1, 2005 or May 1 of any subsequent year.

**C.** The rules governing termination for non-Association members of signatory employers who have not given the Association bargaining rights are set forth in sections two (2) through four (4) below.

**Section 25.02** - The Union will notify the Association of the name and address of any Employer who becomes signatory to or bound by this Agreement during the term of this Agreement. The notices shall be given in writing within ten (10) days of the time any such Employer becomes signatory or bound hereto. The notice shall include a copy of the signature page of the contract or the assent card and, if not noted thereon, a statement of the date the contract or assent card was signed or the date the Employer became bound.

**Section 25.03** - After a non-association Employer receives notice from the Union of the Union's intent to negotiate pursuant to Section 1 of this Article, the Employer shall have thirty (30) days to send written notification to the Union of its intent to negotiate separately. If an Employer does not notify the Union within said thirty (30) days, the Employers shall be deemed and presumed to agree to such terms and conditions of an

agreement arrived at in negotiations between the Union and the Association and be bound by the collective Bargaining Agreement resulting therefrom.

**Section 25.04-** The provisions of the Article shall operate for successive Collective Bargaining Agreements until such time as the Employer or the Union gives timely notice that said party desires to negotiate separately. Said notice shall be given within the time periods provided for in this Article of this Agreement or any successive Collective Bargaining Agreements.

## **ARTICLE XXVI Duration and Modification**

**Section 26.01 -** The Agreement shall be and remain in effect from the first day of May, 2001 until the thirtieth day of April, 2005, inclusive, and thereafter from year to year; provided that this Agreement will terminate at the expiration of the initial or any subsequent annual period if either party gives written notice to the other party of its desire for termination, at least sixty (60) days before such annual date; and provided further, that if this Agreement is not so terminated and neither party gives written notice to the other of its desire to change or modify this Agreement at least sixty (60) days before the annual date, then this Agreement shall remain in full force and effect after such annual date until a new Agreement is negotiated and signed or until either party gives the other five (5) days' written notice of termination.

## **ARTICLE XXVII Joint Policy Agreement**

**Section 27.01 -** The Building Trades Council, The Construction Employers' Association and other Trade Association representatives through a Joint Policy Committee seeking to improve productivity and harmony in the local construction industry and to encourage owner use of Employers employing union labor agree as follows:

- A.** That a forum be established to meet regularly to discuss the problems of the construction industry.
- B.** That jurisdictional disputes be handled in a discreet manner and off the jobsite.
- C.** That on any major construction project either the Building Trades Council or the Employer may call for a pre-job conference to insure proper assignment of work and to discuss any other conditions that either party considers beneficial for that job.

## **Article XXVIII Code of Conduct**

Labor and Management jointly acknowledge the need to increase market share and endorse the Operative Plasterers and Cement Masons' International Association of the United States and Canada's new Code of Conduct which promotes pride in craftsmanship, customer satisfaction and professional conduct and those items delineated within.

**Article XXIX  
Favored Nations Clause**

The Employer shall not be requested or compelled by the Union to pay a higher rate than is stated in this Agreement. At no time shall any member of Local 404 work for any Employer in any phase of work over which Local 404 has exclusive bargaining power, for any rate of wages or under any working agreement other than those set forth in this Agreement. If the Union shall furnish employees to any Employer within the area of jurisdiction of this Agreement upon any more favorable wage rates and conditions shall automatically be extended to the Employer. Area or national agreements negotiated to cover specific projects or classes or work shall not be considered as "the local or area agreement" as referred to elsewhere in this Agreement.

**ACCEPTANCE OF AGREEMENT**

IN WITNESS WHEREOF, the Parties listed below have hereunto set their hands and seals and state that all provisions in the current collective bargaining agreement, including rates of pay, become effective as of May 1, 2006. The undersigned Employer reaffirms:

Its obligations to comply with all terms and conditions of this Agreement; Its adoption and acceptance of all Trust Agreements pertaining to all Plans and Trust Funds referred to in this Agreement; and Its agreement that the Trustees of such Plans and/or Trust Agreements are authorized to act on this Employer's behalf so long as such Trustees act lawfully.

**CONCRETE CONTRACTORS' ASSOCIATION**

(Date Executed: May 1, 2001 2006)

Macolm Donley, President

Mark Laskey, Executive Secretary

**OPERATIVE PLASTERERS' AND CEMENT MASONS'**

**INTERNATIONAL ASSOCIATION LOCAL NO. 404:**

(Date Executed: May 1, 2006)

Daniel J. Owens, Business Manager

**JOB PRESERVATION**

## SUPPLEMENTAL AGREEMENT

This Agreement is made by this 1st day of May, 2006 between the Construction Employers' Association and the Concrete Contractors Association (hereinafter referred to as the "Association" on behalf of all Employers for whom they hold bargaining rights and any other Employer that becomes signatory to the Standard (collective Bargaining Agreement and the Operative Plasterers and Cement Masons International Association, Local No. 404 (hereinafter referred to as the "Union"). The Employer and the Union recognize that non-union contractors are capturing an increasing percentage of the construction market. In order to retain and preserve work for the Local No. 404 Cement Masons, the Employer and the Union agree to the following program.

1. Any Employer who wishes to bid on any construction project which includes new construction as well as general maintenance and/or renovation or rehabilitation of existing structures and facilities and has reason to believe that he may or may not be competitive may petition the Union for relief.
2. The Employer requesting consideration must submit in writing the job type, locations, estimated total construction costs, approximate number of cement masons to be employed, the type of relief requested and the rationale for the relief of both the Union and Association. The Union and the Association shall evaluate together all jobs and accompanying documentation submitted for consideration at a formal meeting.
3. Within forty-eight (48) hours of the formal meeting (Saturdays, Sundays and holidays excluded), the Union shall notify the Association and Employer of the nature of relief from the basic collective bargaining agreement, if any, that it will grant. Such terms and conditions for the specific project will be reduced to writing and signed by the Employer, Union and Association. Copies of all agreement modifications under this provision must be in writing and signed as above with copies on file in the offices of both the Union and Association.

This Agreement will be extended for the life of the Agreement. whereupon either party may terminate or seek modifications. All existing approved projects will continue until completion of that project.

## SUPPLEMENTAL AGREEMENT

Agreement between the United Brotherhood of Carpenters and Joiners of America and Operative Plasterers and Cement Masons International Association of the United States and Canada, at the headquarters of the First Named Organization, Carpenters' Building, Indianapolis, Ind. June 13, 1944. This Agreement entered into by and between the United Brotherhood of Carpenters and Joiners of America, the Operative Plasterers and Cement Masons International Association of the United States and Canada, in the

matter of jurisdiction to govern the fabrication and setting of screeds and forms used in connection with the placing and finishing of cement or concrete, shall be as follows:

1. The setting of screeds of lumber, metal or other materials to determine the proper grade of concrete when used to serve as forms, such as 2" by 4"s, or other plain pieces of material when held in place by stakes and/or spreaders shall be done by Cement Finishers, members of the O. P. & C.M.I.A. and B.M. & P.I.U. A screed is a strip of wood or metal used as a guide for leveling or grading a concrete floor, slab or sidewalk.
2. The fabricating of all screeds and stakes, for any purpose, and the construction and setting of all forms shall be done by Carpenters, members of the U.B. of C. & J. of A. A form is a built-up section of wood, metal or composition board used for the purpose of molding concrete to a given line or shape.
3. Any bulkhead that is one single board in height, and that has no key attached or which is not notched or fitted shall be set and braced or staked by (Cement Masons, providing same is used as a screed. The term bulkhead shall mean a form or screed erected for the purpose of separating pours of concrete. Any bulkhead that must be notched or fitted, or which has a key attached, or which is over one board high, or any bulkhead that is not used as a screed, shall be fabricated and set by Carpenters.

For the U.B. of C. & J. of A.:

M.A. Hutcheson,  
First General Vice President  
John R. Stevenson,  
Second General Vice President

For the O. P. & C.M.I.A.:

John E. Rooney,  
General President  
John J. Hauck,  
First Vice President

THIS MEMORANDUM OF UNDERSTANDING IS TO SUPERSEDE ANY AND ALL AGREEMENTS OR UNDERSTANDING, EITHER WRITTEN OR ORAL, WHICH HAVE BEEN IN USE OVER THE YEARS, WHICH PERTAIN TO THE ITEMS OF WORK OUTLINED IN THIS MEMORANDUM OF UNDERSTANDING.

MEMORANDUM OF UNDERSTANDING between Operative Plasterers and Cement Masons' International Association of the United States and Canada Bricklayers, Masons, and Plasterers' International Union of America and Brotherhood of Painters, Decorators and Paperhangers of America. This Agreement has been entered into between the Operative Plasterers' and Cement Masons' International Association of United States and Canada (O.P. & C.M.I.A.), the Bricklayers. Masons, and Plasterers International Association Union of America (B.M. & P.I.U. of A.), and the Brotherhood of

Painters, Decorators and Paperhangers of America (B. Of P.D. and P.H. of A.) For the purpose of improving relations between the three International Unions and to facilitate the settlement of jurisdictional disputes directly and promptly between the three Organizations or any two of them, and in order to establish an understanding that will mutually assist each of the signatory parties to secure and to perform work coming within their recognized jurisdiction. It is extremely understood and agreed that this Agreement shall not relate to nor have any bearing on jurisdictional disputes that may now exist or may in the future occur between any of the parties hereto and any other International Union or subordinate body thereof not parties hereto. The parties signatory to this Agreement recognize each other's right to use the basic tools necessary to perform work outlined in the following sections of this Agreement:

The term Plasterer or Cement Mason as used hereafter in this Agreement shall be construed to mean members or applicants for membership of the O. P. & C. M. I. A. Or Plasterer or Cement Mason members or applicants for such membership of the B. M. & P. I. U. of A.

The term Painter as used hereafter in this Agreement shall be construed to mean members or applicants for membership of the B. of P.D. & P. H. of A.

**A. Correction of Imperfections Including Coatings Related to Finishing on New or Old Concrete Surfaces.**

1. It is agreed that all chipping, cutting, grinding, patching and rubbing of concrete surfaces necessary to correct imperfections caused by sagging, bulging or separation of concrete forms, or by the deterioration scaling or cracking of concrete, shall be performed by Cement Masons.

2. It is agreed that, where concrete surfaces are to receive materials recognized as the work of the Painter, and Cement Masons have performed and completed that operation outlined in paragraph 1, the Painter shall do such pointing, preparatory to painting, as may be required to complete their work, provided that such pointing shall not include the filling of air holes that exceed a diameter of 1/8".

3. (a) It is agreed that the application of a brush coat or cementbase material as part of the operation of patching concrete is the work of Cement Masons when the color of the cement-base material is substantially the same as the surface to which it is applied. (b) Where brush-coat of cement-base materials is applied for purposes other that described in 3 (a) above, the work will belong to Painters.

**B. Preparation for and Application of Waterproofing Materials for Stopping Leaks in Concrete and Masonry Units.**

1. All chipping and cutting of concrete that is necessary to trace sources of leakage and to prepare concrete surfaces, for installation of materials used in stopping leakage shall be under the jurisdiction of Plasterers and Cement Masons.
2. All chipping and cutting of Masonry Units that is necessary to trace sources of leakage and to prepare surfaces of such units for installation of materials used in stopping leakage in such units shall be the work of members of the B.M. & P.I.U. of A.
3. The installation of materials used in the stopping of leaks in concrete shall be under the jurisdiction of Plasterers and Cement Masons.

C. Application of Waterproofing and Damp proofing Materials to Concrete Surfaces.

1. The application of non-decorative\*\* materials for waterproofing or damp proofing purposes of new or old concrete shall be the work of Cement Masons or the B.M. & P.I.U. of A. Or the O. P. & C. M. I. A. of U. S. & C.

\*\* For purposes of defining the term "non-decorative" it shall mean:

- a. Sand and cement coats, with or without damp or waterproofing additive, where no color is added.
- b. Sand and cement coats, with or without damp or waterproofing additive substantially the same color as the surface to which it is applied.
- c. Damp and waterproofing materials, as identified as such by the manufacturer, which is substantially the same color as the surface to which it is applied.

2. The application of decorative\*\*\* materials for waterproofing and damp proofing purposes shall be the work of the Painter.

\*\*\* For the purposes of defining the term "decorative" it shall mean:

- a. Sand and cement coats, with or without damp or waterproofing additive, where color is added to the material – (This shall not be construed to deny the Plasterer the right to apply waterproofing Plaster to these surfaces wherever it is specified.)
- b. Sand and cement coats, with or without damp or waterproofing additive, when the color is not substantially the same as the surface to which it is applied.
- c. Damp and waterproofing material, identified as such by the manufacturer, where the color is not substantially the same as the surface to which it is applied.

d. All paint materials, identified as such by the manufacturer, regardless of color or other method of application. ("Substantially the same" shall be white or gray cement or clear silicone, and shall apply under the "non-decorative" as well as "decorative" paragraphs of this Section.)

#### D. Application of Cement Base Wash Coat to Exterior Plastered Surfaces.

1. The application of initial wash coat to exterior plastered surfaces on new work\* shall be the work of the Plasterers, provided the wash is substantially the same color as the surface to which it is applied (in all instances gray or white cement base washes are considered to be substantially the same as the plastered surface to which they are applied).

\*New work as defined in this Section shall also include the major overhaul, renovation, repair or alteration of buildings.

2. The application of washes to exterior plastered surfaces, except as defined in paragraph 1 of this Section, shall be work of the Painters.

#### E. The Application of the Following Materials Including the Cleaning and Preparation of Concrete Floor Surfaces to Receive Concrete Stains, Sealers, Curers, Hardeners and Waxes.

1. The above materials included in concrete prior to pouring, or in the finishing process performed during the curing period (not to exceed one week) is the work of the Cement Masons.

2. After the curing period of one week has expired the application of all above materials is the work of Painters.

#### F. Pointing, Taping and Texturing on Drywall Surfaces.

1. All pointing and taping of drywall, regardless of material used, is Painter's work, providing the drywall surfaces are not to receive Plaster, acoustical or imitation acoustical finishes. The application of texturing to drywall surfaces is the work of Painters where paint materials are used.

2. The application of plaster, acoustical or imitation acoustical finishes shall be the work of the Plasterers, as well as the preparatory pointing and taping of drywall surfaces that are to receive these finishes. If a dispute should arise over the interpretation or application of this Agreement, the two business agents of the respective unions shall make a conscientious endeavor to settle the dispute locally. Should the business agents

fail to consummate a satisfactory understanding, they shall immediately draw up a joint or similar report describing the disputed work, including pictures and specifications of the work in dispute, and forward it to the Presidents of their respective International Unions. Disputes forwarded to the respective General Presidents shall be referred to a designated representative for immediate adjustment. An Administrative Committee composed of one representative from each International Union shall be designated by the respective General Presidents to meet periodically to review work covered by this Agreement and to consider any problems which arise in order to adjust same.

Signed this November 29th, 1961

Approved by the General Executive Board of the Brotherhood of Painters, Decorators and Paperhangers of America.

L.M. Raftery, General President

Brotherhood of Painters, Decorators and Paperhangers of America

Approved by the General Executive Board of the Bricklayers, Masons and Plasterers' International Union of America

John J. Murphy, President

Bricklayers, Masons and Plasterers' International Union of America

Approved by the General Executive Board of the Operative Plasterers' and Cement Masons' International Association of United States and Canada

### ACCEPTANCE OF AGREEMENT

IN WITNESS WHEREOF, the Parties listed below have hereunto set their hands and seals and state that all provisions in the current collective bargaining agreement, including rates of pay, become effective as of May 1, 2006. The undersigned Employer reaffirms:

1. Its obligations to comply with all terms and conditions of this Agreement;
2. Its adoption and acceptance of all the Trust Agreements pertaining to all Plans and Trust Funds referred to in this Agreement: and
3. Its agreement that the Trustees of such Plans and/or Trust Agreements are authorized to act on this Employer's behalf so long as such Trustees act lawfully.

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PRINT NAME OF EMPLOYER

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ADDRESS, CITY, STATE, ZIP CODE

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TELEPHONE # FAX #

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PRINT POSITION OF PERSON SIGNING

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SIGNATURE DATE

OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL  
ASSOCIATION LOCAL NO. 404

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PRINT POSITION OF PERSON SIGNING

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SIGNATURE DATE