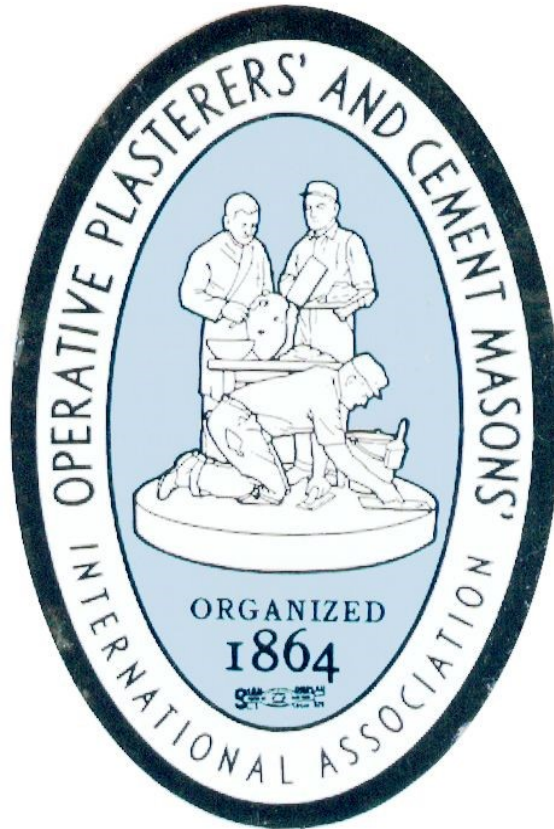


# **Cement Masons Building Trades Agreement**



**Between**  
**Concrete Contractors' Association and Construction Employers**  
**Association and**  
**Cement Masons Local Union No. 404**

**Cleveland, Ohio**  
**2016-2021**

**CEMENT MASONS' AGREEMENT CEMENT MASONS' LOCAL UNION NO. 404  
2016-2021**

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## **CEMENT MASONS' AGREEMENT May 1, 2016 - April 30, 2021**

THIS AGREEMENT made and entered into by and between CONCRETE CONTRACTORS ASSOCIATION and CONSTRUCTION EMPLOYERS ASSOCIATION of Cleveland, Ohio, being the party of the first part, herein called the "Employer" 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 and each member of each of said associations, regardless of the capacity in which work is performed (General Contractor, sub-contractor, Construction Manager of any type, etc.) 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, 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, Lake, Lorain, Geauga and Ashtabula Counties in 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 , grinding machines, mechanical shake spreaders, polishing machines or similar type machines or any new equipment which is used to strike-off, level or finish any concrete surface by any method or means 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** – 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 flat surfaces of cement, rock asphalt, the placing, pouring and finishing of all types of bituminous concrete, including all types of asphalt floors and pavement, the operation and control of Vacuum Mats used in the drying of cement floors and the preparation of same for finishing, the operation of all laser screeds, roller screeds mechanical straight edges and all power driven troweling or float machines whether walk behind or riding shall be work of the Cement Mason. The sandblasting of concrete, gunite and shotcrete work and the handling of a cement gun or nozzle shall be that of the Cement Mason. Cement Masons shall perform all mastic flooring work whether laid free hand or in precast form on the job; otherwise known as asphalt or mastic, tile and all other types of resilient floor covering. The preparation and patching of concrete floors, including the leveling and finishing of cementitious and epoxy material for corrective purposes and the operation of machines for scoring, scarifying or grinding floors 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. Cement Masons shall perform the screeding and finishing of all concrete and pervious concrete surfaces; the stamping, coloring, sealing, curing, waxing (including the forming and construction involved with any concrete countertop work, also including additives and mosaics such as but not limited to glass and specialty aggregates and exposed aggregate) of concrete, including all decorative finishes such as stenciling staining, dyeing, densification, polishing, sandblasting and grinding of all concrete construction. The finishing or washing of all concrete construction, the use of any color pigment when mixed with cement, including all specialty finishes such as acid staining, alcohol staining, acetone staining or 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 placing, 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 sandblasting, cutting of nails, wires, wall ties, snap ties, regardless of method used, etc. All concrete repair processes including below grade and underground, including the repair or modification in horizontal or vertical pipe, all vault pouring, pipe banding and shafting patching, brushing, chipping and bush-hammering, rubbing or grinding if done by machine, diamond or carborundum stone of all concrete construction, setting of all strips, screed stakes and grades and curb forms and all glass set in cement. The pointing, patching and caulking around all steel or metal window frames that touch concrete and all concrete segments such as tilt wall or pre-cast and the grouting of door bucks and door frames. The laying and finishing of Gypsum material and preparation of same. All dry packing, damp packing, pouring of grout, grouting and the pouring, placing and pumping of all liquid grouts, epoxy grouts, damming or backer road, caulking including all preparatory work for caulking, forming and operation of pressure pots in connection with all grouting operations as well as any finishing in connection with setting all machinery such as engines, pumps, generators, air compressors, tanks, base plates, column plates, pipe restraints and so forth which is set on concrete foundations. The saw cutting, scoring of joints (whether expansion, control or other) or the cutting of any line that will be finished back to in old or new concrete shall continue to be the work of the Cement Mason. 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 finishing of all concrete surfaces by sandblasting, washout method, bush hammering or any other method and the sealing of these same surfaces shall be the work of the Cement Mason. 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, pervious concrete and grout, wherever necessary, whether by chemical compounds or otherwise shall be part of the jurisdiction of the Cement Mason. 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, regardless of the methods used.

All custom and specialty imitation finishes, including but not limited to all ceramic materials, custom rock, brick and block veneer, imitation marble, stone, wood and any other imitation theme. All concrete repair, restoration and inspection work whether architectural or structural, including but not limited to coatings of cement and epoxy coatings of cement based, epoxy and urethanes, injections of epoxies and other repair materials and the use of fiber wrap and other materials used for the structural repair and renovation. Caulking of any type will be the work of the Cement Mason. Cement Masons shall have jurisdiction over the setting, building, fabricating and installation of all forms, perimeter forms, screeds, bulkheads, batter boards, pour strips, chamfer strips for the purpose of containing, shaping or molding concrete, grout, epoxy grout, or any exotic or cement based material on a given line, shape or grade regardless of the composition of the form material. Formwork shall include but not be limited to foundations, sidewalks, curbs and gutters, steps, catch basin and drain inlets, walks, decks, stoops, approaches, etc. and shall include the preparation and setting of all screeds or lines and the use of the level, laser level, transit and builders level in connection with the forming, placement and finishing of all concrete and cement based surfaces or any other method used to determine grade elevation or line.

All scarifying of concrete and underlayments, overlayment, for all purpose including but not limited to bush hammering, needle grinding, water blasting, air blasting and sanding.

The placing, spreading, screeding, darbying, trowel finishing of all types of magnesium oxychloride cement composition floors, shall be the work of the Cement Mason: including all types of oxychloride granolithic or terrazzo composition floors, hand grinding or machine grinding; the preparation of all sub-floor surfaces; the mixing, handling and application of any and all bonding agents by any means or methods; bonding; the preparation and all installation of ground or base courses, steps and cove base. The purpose and intent of the six-inch base law must not be defeated. All magnesite composition installation work of the OPCMIA shall be done under the supervision of a competent and qualified Cement Mason. Cement Masons shall perform any additional work as assigned by the Employer.

The regulation of the size of the hand finishing trowel shall be a matter of local autonomy.

#### Builder's Agreement Troweling and Floating Machines

Wherever in the Local's jurisdiction a floating or troweling machine is operated on any floor, sidewalk, loading dock or any other flat surface where cement, concrete, or other plastic material is being placed and finished, a Cement Mason or Cement Masons must hand float or hand trowel, before and after each and every operation of such machine or machines, including the final operation of said machine.

Sufficient Cement Masons will be required to precede the operation of said machine or machines in order that the proper slab shall be made and the operator of any such machines shall be a Cement Mason.

Whenever a paving machine, concrete spreading machine, mechanical straightedge, multiple troweling machine, or similar type machine or new equipment is to be used on any type of work coming under the jurisdiction of the Cement Masons' Local Union, a pre-job conference will be held between the employer or his representative, and the business representative or representatives of the union on each specific job, for the purpose of determining the complement of cement masons needed to complete all of the work under the jurisdiction of the Cement Masons' Local Union.

All such machines shall be operated by and under the supervision of a Cement Mason.

**Section 2.03** - Cement Masons claim the waterproofing of all work included in their jurisdiction, such as Thoroseal, Ironite, Plasterweld and any similar products, regardless of the tools used or the method of application, or color of materials used, and regardless of the type of base these materials may be applied to.

### **ARTICLE III - 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 employers 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, WORK ASSIGNMENT AND PRE-JOB CONFERENCES**

**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.

**Section 5.02** - At the discretion of the Union a pre-job conference may be requested to achieve the intent of this Agreement. The conference must be held within five (5) days of the Union's request at a place and

time mutually agreed upon. The Local Union shall verify that the subcontractor is current in the remittance of any and all fringe benefit payments and shall notify the contractor within five (5) working days of the completion of the pre-job whether the subcontractor is current or not.

**Section 5.03-** At the request of the Union each employer shall complete a pre-job conference form that shall be supplied by the Union. The pre-job conference form shall be completed, signed and remitted to the Union office by the employer or employer's authorized representative within 10 business days of receipt.

## **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:

**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.

**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.

**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 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 AFLCIO or a Local Union thereof.

## **ARTICLE VIII - WORK HOURS**

**Section 8.01** - Eight hours shall constitute the regular workday between the hours of 6:00 a.m. and 4:30 p.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 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 3 hours after the start of the shift and completed by 5 ½ hours after the start of the shift.

**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 3 hours after the start of the shift and completed by 5 ½ hours after the start of the shift 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 times 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

The observed holidays shall be New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. 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. There shall be no work on Labor Day except in special cases of emergency.

## **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 employer anticipates resistance, reluctance or objection on the part of the buyer of construction services, the

Employer 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. For purposes of this Section a bonus shall be recognized as any payment made to a cement mason above and beyond the rate of General Foreman, which is the highest negotiated rate between the Union and the Association.

**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.

**Section 8.11** - (4-10s) - The employer 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 Employer'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 Employer 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 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 Employer 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 eight (8) hours and receive two dollars (\$2.00) over the regular straight time hourly rate. The third shift will begin eight hours after the second shift and shall work eight (8) hours and receive two dollars twenty-five cents (\$2.25) the regular straight time hourly rate.

**Section 10.02** — 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 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 shall be by mutual agreement between the Employer and the Union.

**Section 10.03** - 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 10.04** - 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 10.05** - 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 10.06** - 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 10.07** – No Cement Mason shall work alone on any shift or overtime, including the sawman.

**Section 10.08** – Adequate light shall be provided both for safety and working conditions.

## **ARTICLE XI - RATE OF PAY**

**Section 11.01** - The journeymen rate of wages to be paid by the Employer in the classifications of work herein shall be the amount per hour specified in the Cement Masons Local 404 Wage Sheet. To be eligible for the annual increase in wages the Employer shall verify the employee has completed 8 hours of journeyman upgrade training during the previous 12 months.

**Section 11.02** - During the five year period of this Agreement (May 1, 2016 - April 30, 2021) the wage will be paid and adjusted as is specified in the Cement Masons Local 404 Wage Sheet which will be updated effective May 1 of each year. The Cement Masons Local 404 Wage Sheet will include a \$1.10/hour increase to the total wage and benefit package, effective May 1, 2016. In subsequent years, the Cement Masons Local 404 Wage Sheets will include increases to the total wage and benefit package in the amount of \$1.05/year effective on May 1, 2017, May 1, 2018, May 1, 2019 and May 1, 2020.

**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** - 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 11.07** — Payroll checks and direct deposit pay stubs shall have a wage statement attached , and payroll checks and/or pay stubs 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. In the event an Employer refuses to provide a wage statement the employee shall receive pay, including fringe benefits, for any and all waiting time until a proper wage statement is provided.

**Section 11.08**—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 Employer 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 Employer shall pay the employee four (4) additional hours, including fringe benefits. 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. In the event an employer delivers payroll checks to the jobsite for an eight (8) hour day and the employees are still working overtime hours to complete the day's work, then the employer shall have to remit payment of any and all overtime hours worked by the employees and have said overtime checks postmarked within two (2) working days or the employees shall be entitled to an additional four (4) hours of pay, including fringe benefits. 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 11.09** - 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 11.10** - 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 11.11** - Employer shall pay an amount not to exceed seven dollars (\$7.00) with receipt, per day per worker when no free parking is provided within one-half (1/2) mile of the jobsite.

**Section 11.12** - The Employer shall, after 9:00 a.m. and before 10:00 a.m., at a time convenient to him, 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 11.13** - It is further agreed if any fringe benefit including JATC contributions would be terminated in the future, the amount allotted for same would be added to wages.

**Section 11.14** - 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 11.15** - 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 11.16** (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.

**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, cashier's 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 its 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 or 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 employer 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 and shall be subject to an expedited grievance procedure brought by the Union.

**Section 12.11** - All Employers 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 Combined Funds, Inc. and a copy of the bond shall be remitted to the Local Union office and Association for their records. 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 \$30,000.00. Add per each additional five (5) Employees or a fraction thereof \$30,000.00.

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.

**Section 12.12** - On an annual basis during the first quarter of the calendar year or more often if deemed necessary and agreed to by the parties, the parties shall jointly request copies of each Employer's bond, which each Employer must provide to the Union and Association within thirty (30) days of the written request. Employers who fail to provide copies of an adequate bond on a timely basis shall be deemed without a bond and in violation of Section 12.11 and subject to an expedited grievance procedure brought by the Union. Any Employers without a proper bond on file shall be given thirty (30) calendar days to remit said bond to the Union office. If, after thirty (30) days, the bond has not been remitted, the Employer shall be subject to the following provision, which is negotiated on behalf and may be enforced by any employee benefit plan affiliated with the Union, in the event of any fringe contribution delinquency. Employers contracting with the unbonded Employer shall also honor the following provision:

- a) Employer acknowledges that it is a bound by a Collective Bargaining Agreement (CBA) with Local 404, which obligates Employer to pay contributions to the Funds by making payments no later than the 15th of each month to the Funds based on each hour worked by it covered employees
- b) Employer acknowledges that it has performed and or will perform work covered by the Collective Bargaining Agreement. Employer also acknowledges and agrees that the Funds may proceed, or has already proceeded, to enforce their rights to collect any and all contributions owed by Employer in one or more legal proceedings.
- c) For the value received, Employer hereby unconditionally and irrevocably assigns and transfers to the Funds all of Employer's rights, title, and interest, whether legal or beneficial in any amounts now or hereafter payable by Owner(s) or General Contractor(s) to Employer until any and all contributions owed by Employer are paid in full and all related rights and remedies (including mechanics liens and payment bond claims) and all advantages to be derived therefrom. Employer fully warrants that it has full rights and authority to enter into this assignment and that the rights and benefits assigned hereunder are free and clear any lien, encumbrance, adverse claim or interest by any third party. This assignment shall be binding upon and inure to the benefit of the parties and their successors and assigns.
- d) In accordance with the assignment and transfer to the Funds under this assignment all parties hereby agree that all retainage and other monies payable by Owner(s) or Contractor(s) to Employer in connection with work performed under this Agreement shall be made through one check. The check shall be made payable to the order of the Ohio Conference of Plasterers and Cement Masons Combined Funds, Inc. ("Funds") to satisfy contributions owed by Employer. Prior to issuing any check(s) pursuant to this assignment, Owner(s) or General Contractor(s) may contact the following to determine the amount of the contributions, if any, owed by Employer:

Ohio Conference of Plasterers and Cement Masons  
Combined Funds, Inc.  
33 Fitch Blvd.



Austintown, Ohio 44515  
(800) 435-2388

- e) Employer acknowledges that money payable to it by Owner(s) or General Contractor(s) and assigned and transferred to the Funds pursuant to this assignment are sole property if the Funds and are not property of Employer, and Employer's receipt of any such payments shall be in trust for the benefit of the Funds.

The rights provided hereunder are in addition to any rights of any party to bring an action to enforce this provision and obtain fees and expenses related to the filing of said action.

**Section 12.13** - If an Employer fails to comply with this Article XII, the Union or the Association may bring action in court against the employer to enforce this Article. If an action is brought and the Employer is determined to be in violation of this Article, the Employer shall pay all costs and expenses incurred by the party bringing the action, including, but not limited to filing fees and reasonable attorneys' fees. The Employer shall not be relieved of its obligation to pay fees and expenses once an action is filed, even if it cures its breach of this provision after an action is filed.

### **ARTICLE XIII - VOLUNTARY CHECK-OFF OF DUES**

**Section 13.01** - The Employer shall deduct the appropriate amount from each journeyman and apprentice as stated on the Cement Masons Local 404 Wage Sheet for dues check-off who have executed a check-off authorization card in a form approved by the parties. The amount 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 Ohio Conference of Plasterers and Cement Masons Combined Funds, Inc. 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 one dollar (\$1.00) per hour above the Journeyman rate. However, the General Foreman shall receive two dollars (\$2.00) per hour over Journeyman 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 to work on a job, without a journeyman unless the apprentice is a third-year.

**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 set forth on the Cement Masons Local 404 Wage Sheet:

**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 an employer in the jurisdiction of this Agreement, there shall be one (1) apprentice for every five (5) workers. The employer 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 parties agree to take any necessary steps to meet EEO requirements.

**Section 16.07** - Each employer shall contribute to the jointly administered Apprenticeship Fund in the amounts specified in the Cement Masons Local 404 Wage Sheet for each straight time, overtime, and double-time hour worked.

**Section 16.08** - The amount of the aforesaid Apprenticeship Fund contribution that is to be deducted from the hourly wage shall be specified in the Cement Masons Local 404 Wage Sheet.

**Section 16.09** - All apprentices employed by a signatory employer must be registered to Cement Masons' Local 404 JATC Committee.

**Section 16.10.** – International Training Fund (ITF). The Operative Plasterers and Cement Masons International Association (OPCMIA) created the International Training Fund. The contribution rate shall be equal to .13% of the total hourly package for wages and fringe benefits. The amount of the contribution shall be placed on the Cement Masons Local 404 Wage Sheet as an Employer contribution and shall be adjusted accordingly. The trust documents of the OPCMIA International Training Fund shall be made available upon request to the Union.

## **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 is 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. For purposes of this Section the employer shall be responsible to provide any and all safety equipment needed to perform a day's work. Safety equipment, shall include but not be limited to hardhats, safety glasses, hearing protection, safety vests and, metatarsal boots.

- A.** Pre-hire safety and education training as required by the Employer shall be made available to the Cement Mason, by the Employer. This training will be at no cost to the Cement Mason and no wages and/or fringe benefits will be paid by the Employer. This Section shall not be applicable for on site orientation or safety training as required by an Owner.

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

**Section 17.12** - 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 17.13** - 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 Employer 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 (“CISP”) 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 Employer covered by this Agreement shall pay to said CISP Trust as of May 1, 2013, the amount specified in the Cement Masons Local 404 Wage Sheet. 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 CISP 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 employer or employer 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. Upon notification to the Employer or Union that the training has not been completed, appropriate disciplinary action shall be taken. All new cement masons hired by the Employer, 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' Local404 Joint Apprenticeship and Training Fund.

**Section 19.10** – Monitoring, Awareness and Respirator Safety (“MARS”) Program: The Union will ensure that all Union Members receive the following on an annual basis:

1. OSHA medical respiratory questionnaire;
2. Silica medical evaluation, including chest X-Ray; and
3. Respirator Fit test

Each employee's CISAP Card shall display the manufacturer, make and model number of the respirator(s) said employee is eligible to wear as a result of the above evaluations and tests. The CISAP (TPA) shall track and document all appropriate information for each employee. The aforementioned items shall be paid and funded through the Construction Industry Service Program (CISP). Details concerning the implementation of this MARS Program shall be discussed and, if necessary and amended within the context of an industry Labor-Management Committee in which the parties will participate. .

Each Employer is responsible for: (a) job-site air sampling; (b) providing silica and respirator training to employees; and (c) purchasing and maintaining appropriate respirators, filters and cartridges.

## **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 gender.

**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 CONSTRUCTION INDUSTRY SUBSTANCE ABUSE POLICY (CISAP)**

**Section 21.01** - This Agreement incorporates by reference the special program entitled Construction Industry Substance Abuse Policy (CISAP) 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 - SALARY CONTINUATION**

**Section 22.01** - 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 22.02 - 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 XXIII - CONSTITUTIONALITY OF AGREEMENT**

**Section 23.01** - 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 23.02** –The parties shall meet within thirty (30) days to negotiate language to replace the language to be invalid.

**ARTICLE XXIV - TERMINATION**

**Section 24.01** — This Agreement shall become effective as of May 1, 2013 and will continue in full force and effect until April 30, 2016, with the following provisions and exceptions:

- A. This Agreement may be reopened for negotiations sixty (60) days prior to May 1, 2016
- B. This Agreement will continue in full force and effect from year to year after May 1, 2016 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, 2016 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 24.02** - The Union will notify the Construction Employers 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 on a monthly basis. 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. If no Employer becomes signatory to or bound by this Agreement during any given month, the written notice for that month shall so state.

**Section 24.03** - 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 24.04**- 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 XXV - DURATION AND MODIFICATION**

**Section 25.01** - The Agreement shall be and remain in effect from the first day of May, 2016 until the thirtieth day of April, 2021, 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 XXVI - LABOR MANAGEMENT COLLABORATIVE**

**Section 26.01** - The Building Trades Council, The Construction Employers' Association and other Trade Association representatives through a Labor Management Collaborative 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 XXVII - ALTERNATIVE DISPUTE RESOLUTION PROCEDURE**

If during the term of this Agreement, the Ohio legislature authorizes ADR programs in the Ohio Workers Compensation laws, the parties agree to meet and negotiate in good faith a program consistent with the legislation.

## **ARTICLE XXVIII - DIVERSITY**

If required by or on behalf of an Owner, the Union will refer local residents, minorities and females in proportion to the goals established for the project provided that all categories and crafts working for the Employer at the project equitably participate in efforts to achieve the goals. Notice of said requirement



must be received in the Union office no less than fifteen (15) days prior to the proposed start date of employment.

**ARTICLE XXIX - 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 XXX - 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.

**MEMORANDUM OF AGREEMENT: SUBSTANCE ABUSE PROGRAM**

The undersigned parties hereby reaffirm the applicability of the Construction Industry Substance Abuse Program (CISAP) to all employees covered under this Agreement. The parties have collectively bargained the choice of third-party administrator (TPA) to be used under this Agreement and hereby agree that any and all future decisions concerning choice of (TPA) will be collectively bargained. As a result of this Agreement, payments for substance abuse testing will be made by the Construction Industry Service Program (CISP) and CISP shall receive the \$.04/hour to pay for said testing.

**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, 2013. 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

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



Robert Dalrymple, President  
(Date Executed: May 1, 2016)



Charles W. Wanat, Business Manager  
(Date Executed: May 1, 2016)

CONSTRUCTION EMPLOYERS ASSOCIATION



Tim Linville, Chief Executive Officer  
(Date Executed: May 1, 2016)

**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, and 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.

**Memorandum of Understanding  
Concerning Contributions  
to the  
Construction Industry Service Program**

The current (as of April 2016) \$0.16/hour contribution into the Construction Industry Service Program ("CISP") shall increase automatically to reflect an amount equal to .36% of the total hourly package for wages and fringe benefits (rounded up to the nearest cent). CEA will notify the Union of the CISP amount and calculation for each year of the collective bargaining agreement and the Union will insert that amount into the Cement Masons Local 404 Wage Sheet.