

AMENDMENT NO. 1 TO AMENDED AND RESTATED  
TRUST AGREEMENT ESTABLISHING THE CEMENT MASONS  
APPRENTICESHIP AND TRAINING TRUST FUND  
NORTHERN CALIFORNIA

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This Amendment No. 1 to the Amended and Restated Trust Agreement, originally establishing the Cement Masons Apprenticeship and Training Trust Fund for Northern California July 18, 1974, is made and entered into as of July 1, 2002, by and between the Employer and the Union named in the Trust Agreement acting pursuant to Section 1 of Article XI of the Trust Agreement provides as follows:

**Recitals:**

The Employer and the Union have reviewed the importance of the regular and prompt payment of employer contributions to the maintenance of the fringe benefit funds provided for in the Cement Masons' Master Agreement for Northern California. They have considered all pertinent factors bearing on the problem of employer delinquencies, including, without limitation, the cost to the Fund of collection activities made necessary by those delinquencies, the losses to the Fund resulting from the failure of delinquent employers to file reports of contributions at a time when moneys to pay contributions were available through customary construction industry procedures, the delay in and increased cost of making benefit payments to employees due to delinquent employer reports and contributions, and the adverse effect of employer delinquencies upon the willingness of all other employers to make regular and prompt payments to the Fund. The Employer and the Union have concluded that it remains extremely difficult, if not impracticable, to fix the actual expense and damage to the Fund and to the fringe benefit plan supported by the Fund, which results from the failure of an individual employer to pay his monthly fringe benefit contributions in full within the time provided in the Trust

Agreement. However, the Employer and the Union have estimated that the cost and damage to the Fund is significant and that it would aid in the solution of the problem of employer delinquencies if the Trust Agreement were amended to provide: (1) that the cost and damages will be payable by the delinquent employers to the Fund as a liquidated damages and not as a penalty, effective for contributions due for work performed on or after November 1, 2002; (2) that the Board of Trustees be granted authority to amend the liquidated damages and interest provisions applicable to delinquent contributions; and (3) that any adjustments made by the Board of Trustees to the liquidated damages and interest provisions reflect the administrative and collection cost associated with the delinquent contributions owed to the Fund.

**Provisions:**

Effective for contributions due for work performed on or after November 1, 2002, Section 10 of Article II of the Trust Agreement is revised to read as follows:

**Sections 10.** Each Contribution to the Fund will be made promptly, and in any event on or before the 25<sup>th</sup> day of the calendar month in which it becomes payable, on which date the Contribution, if not paid in full, will be delinquent, and the Contribution, as increased, will be the payments specified in this Trust Agreement and the Program pursuant to ERISA as required to be made to the Fund. If any Individual Employer fails to make his or its monthly Contribution on or before the 25<sup>th</sup> day of the month on 4 occasions within any 12-month period, the Board of Trustees may provide by resolution that during the 12-month period immediately following the resolution the 15<sup>th</sup> day of the month will be the delinquency date for that Individual Employer.

The parties recognize and acknowledge that the regular and prompt payment of Employer Contributions to the Fund is essential to the maintenance of the Plan, and that it would be extremely difficult, if not impracticable, to fix the actual expense and damage to the Fund and to the Program which would result from the failure of an Individual Employer to pay monthly Contributions in full within the time above provided. Therefore the parties signatory to this Trust Agreement, as well as the collective bargaining parties, authorize the Board of Trustees to set or amend the liquidated damages and interest provisions applicable to delinquent Contributions. Any adjustments implemented by the Board of Trustees will reflect the administrative and collections costs associated with the delinquent Contributions due to the Trust Fund. The amount determined by the Board will become due and payable to the Fund as liquidated damages

and not as penalty, in San Francisco, California upon the day immediately following the date on which the Contribution or Contributions become delinquent.

Subject to the revision made by this Amendment, all of the terms and provisions of the Trust Agreement, as previously amended, are continued in full force and effect.

For the Employer:

For the Union:

THE ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, INC.

DISTRICT COUNCIL OF PLASTERERS AND CEMENT MASONS OF NORTHERN CALIFORNIA

By: [Signature]

By: [Signature]

DATE: 3/1/04

By: \_\_\_\_\_

By: \_\_\_\_\_

DATE: 1-8-2004

