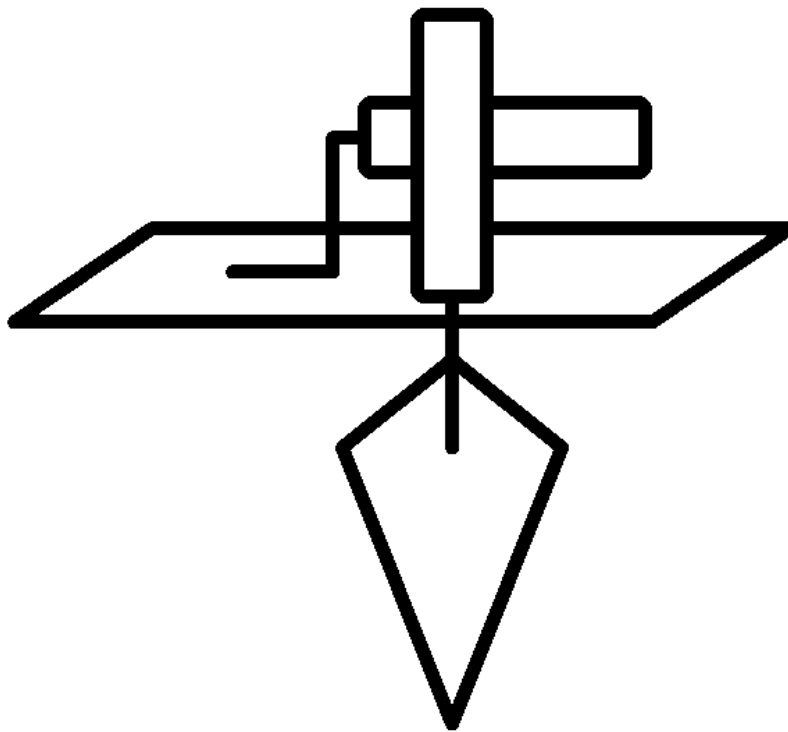


**CEMENT MASONS  
PENSION TRUST FUND  
FOR NORTHERN CALIFORNIA**



**PENSION PLAN**

**RULES AND REGULATIONS  
AMENDED AND RESTATED AS OF SEPTEMBER 1, 2014**

**CEMENT MASONS  
PENSION TRUST FUND  
FOR NORTHERN CALIFORNIA**

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# CEMENT MASONS PENSION TRUST FUND FOR NORTHERN CALIFORNIA

## PENSION PLAN AMENDED AND RESTATED EFFECTIVE SEPTEMBER 1, 2014 (Includes Amendment No. 1 to the September 1, 2010 Restatement)

### ARTICLE 1 DEFINITIONS

Unless the context or subject matter otherwise requires, the following definitions will govern in the Plan:

**Section 1.01 Actuarial Equivalent.** "Actuarial Equivalent" unless otherwise specified in the Plan means:

- a. For determinations as of any Annuity Starting Date that is on or after September 1, 2008, a benefit has the same actuarial value as another benefit based on the Applicable Mortality Table and the Applicable Interest Rate as specified below:
  - (1) The "Applicable Mortality Table" is the mortality table specified for the calendar year under subparagraph (A) of Code section 430(h)(3) (without regard to subparagraph (C) or (D) of such section).
  - (2) The "Applicable Interest Rate" shall mean the adjusted first, second, and third segment rates applied under rules similar to the rules of Internal Revenue Code section 430(h)(2)(C) for the month of November (as published in December) immediately preceding the calendar year (which serves as the stability period) that contains the Annuity Starting Date. For this purpose, the segment rates shall be subject to the conditions set forth in Code section 417(e)(3)(D).
- b. For determinations as of any Annuity Starting Date that is on or after September 1, 2000 and before September 1, 2008, a benefit that has the same actuarial value as another benefit as of a specified date based on the "Applicable Mortality Table" and the "Applicable Interest Rate." For this purpose:
  - (1) The "Applicable Mortality Table" is the table prescribed for use in the calendar year in Regulations under Code section 417(e), and which until modified or superseded, is the table set forth in Revenue Ruling 95-6. Effective September 1, 2003, the reference to the mortality table prescribed in Revenue Ruling 95-6 shall be construed as a reference to the mortality table prescribed in Revenue Ruling 2001-62; and
  - (2) The "Applicable Interest Rate" is the annual rate of interest on 30-year Treasury securities as specified by the commissioner of Internal Revenue for the month of November (as published in December) immediately preceding the calendar year that contains the Annuity Starting Date.

- c. For Annuity Starting Dates prior to September 1, 2000, a benefit that has the same actuarial value as another benefit is determined on the following basis:
  - (1) The interest rate assumption will be the interest rate prescribed by the Pension Benefit Guaranty Corporation for valuing annuities under single employer plans that terminate after November 30, 1980 without Notice of Sufficiency during the first day of the calendar year in which the benefit is valued.
  - (2) For payment where the Participant is not disabled as defined in Section 3.08, the mortality assumption will be the 1971 Group Annuity Mortality Table weighted as follows:
    - (a) for a Participant's benefit, 100% male and 0% female;
    - (b) for the benefit of a Participant's Spouse or former Spouse, 0% male and 100% female; and
    - (c) in any other case, 50% male and 50% female.
  - (3) For payment where the Participant is disabled as defined in Section 3.08, the mortality assumption will be the PBGC Mortality Tables for Disabled Lives Eligible for Social Security Disability Benefits weighted according to (2) above.

**Section 1.02. "Annuity Starting Date"**

- a. "Annuity Starting Date" means the date as of which benefits are calculated and paid under the Plan and will be the first day of the first month after or coincident with the later of:
  - (1) the month following the month in which the claimant has fulfilled all of the conditions for entitlement to benefits, including the filing of a completed application for benefits, or
  - (2) 30 days after the Plan advises the Participant of the available benefit payment options.
- b. Notwithstanding Subsection a. above, the Annuity Starting Date may occur and benefits may begin before the end of the 30-day period, provided:
  - (1) the Participant and Spouse, if any, consent in writing to the commencement of payments before the end of the 30-day period and distribution of the Pension begins more than 7 days after the written explanation was provided to the Participant and Spouse,
  - (2) the Participant's benefit was previously being paid because of an election after the Normal Retirement Age, or
  - (3) the benefit is being paid out automatically as a lump sum under Section 10.09 of the Plan.
- c. Notwithstanding Subsection a. above, a Participant who has attained Normal Retirement Age and consented to waive the 30-day period in accordance with Subsection b.(1) above, may elect an Annuity Starting Date that is retroactive to the first day of any month following the

date he had both attained Normal Retirement Age and fulfilled all of the conditions for entitlement to benefits except the filing of an application.

- d. The Annuity Starting Date will not be later than the Participant's Required Beginning Date.
- e. The Annuity Starting Date for a Beneficiary or alternate payee under a Qualified Domestic Relations Order (within the meaning of Section 206(d)(3) of ERISA and Section 414(p) of the Internal Revenue Code) will be determined as stated in subsections a. and b. above, except that references to the Joint-and-Survivor Pension and spousal consent do not apply.
- f. A Participant who retires *before* his Normal Retirement Age and then earns additional benefit accruals under the Plan through re-employment will have a separate Annuity Starting Date determined under this Section for those additional accruals, including the election of any benefit payment options available under the Plan.
- g. A Participant who retires *after* his Normal Retirement Date and then earns additional benefit accruals under this Plan through re-employment will retain his original Annuity Starting Date. Payment of any additional benefit accruals will be made in accordance with Section 10.07.b.

**Section 1.03. "Bargaining Unit"** means a group of Employees for which the provisions of the Collective Bargaining Agreement requiring Employer Contributions to this Fund are the same. The Bargaining Unit applicable to each Employee is the Bargaining Unit in which the Employee was employed when Contributions were first made on his behalf.

**Section 1.04. "Beneficiary"** means a person who is receiving benefits under this Plan because of designation for those benefits by a Pensioner or Participant.

**Section 1.05. "Board of Trustees" or "Board"** means the Board of Trustees established by the Trust Agreement.

**Section 1.06. "Building and Construction Industry"** means all building construction and all heavy, highway, and engineering construction including, but not limited to, the construction, erection, alteration, repair, modification, demolition, addition or improvement in whole or in part of any building, structure, street (including sidewalk, curb and gutter), highway, bridge, viaduct, railroad, tunnel, airport, water supply, irrigation, flood control and drainage system, sewer and sanitation project, dam, power house, refinery, aqueduct, canal, river and harbor project, wharf, dock, breakwater, jetty, quarrying of breakwater or riprap stone, or any other operation incidental to that construction work.

**Section 1.07. "Code"** means the Internal Revenue Code of 1986 as amended, including any regulations.

**Section 1.08. "Collective Bargaining Agreement"** means the Collective Bargaining Agreement as defined in Section 1 of Article I of the Trust Agreement which provides for the making of Employer Contributions to this Pension Fund.

**Section 1.09. "Compensation"**

- a. For the purposes of identifying Highly Compensated Employees and establishing the limitations under section 415 of the Internal Revenue Code, a Participant's annual

Compensation will mean the total cash salary or wages paid to the Participant during a Plan Year and reportable as earnings subject to income tax on Form W-2. In addition, Compensation will include any elective deferral (as defined under Code § 402(g)(3)), and any amount that is contributed or deferred by the Employer at the election of the Employee, and which, by reason of Code §§ 125, 132(f)(4), 402(e)(3), 402(k), 402(h)(1)(B) or 457, is not includible in the gross income of the Employee.

b. Compensation will not include:

- (1) Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by the employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
- (2) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and
- (3) Other amounts which received special tax benefits, other than amounts referred to in paragraph

c. In addition to any other applicable limitations which may be set forth in the Plan and notwithstanding any other contrary provisions of the Plan, compensation taken into account under the Plan for any Plan Year for the purpose of calculating a Participant's accrued benefit (including the right to an optional benefit provided under the Plan) will not exceed the limits set forth in Section 401(a)(17) of the Internal Revenue Code, as adjusted for changes in the cost of living as provided in Sections 401(a)(17) and 415(d) of the Code. The foregoing limit will be applied on an Employer-by-Employer basis.

**Section 1.10. "Continuous Non-Covered Employment"** means employment for a Contributing Employer after January 31, 1976 in a job not covered by this Plan which is continuous with a Participant's Covered Employment with the same Contributing Employer. A period of Non-Covered Employment will be considered to be continuous with Covered Employment only if there is no quit, discharge, or other termination of employment between the period of Covered and Non-Covered Employment. "Hours Worked in Continuous Non-Covered Employment" means all Hours Worked in Continuous Non-Covered Employment after January 31, 1976.

**Section 1.11. "Contributing Employer," "Individual Employer," or "Employer"** means any Individual Employer who is required by the Collective Bargaining Agreement to make Contributions to the Pension Fund or who makes one or more contributions to the Fund. The term "Individual Employer" also includes the Northern California Cement Masons Joint Apprenticeship and Training Committee, the Union or any of its affiliated local unions which makes contributions to the Fund with respect to the work of its Employees under a Subscriber's Agreement approved by the Board of Trustees, but only to the extent that the inclusion is permitted by existing laws and regulations and subject to the terms and conditions of those laws or regulations. The Committee, the Union or any affiliated local union is an Individual Employer solely for the purpose of making Contributions with respect to the work of its Employees.

An Employer is not deemed a Contributing Employer simply because it is part of a controlled group of corporations, or of a trade or business under common control, some other part of which is a Contributing Employer.

For purposes of identifying highly compensated employees and applying the rules of participation, vesting and statutory limits on benefits under the Fund but not for determining Covered Employment, the term “Individual Employer” includes all members of an affiliated service group with the Individual Employer within the meaning of Code §414(m) and all other businesses aggregated with the Individual Employer under Code §414(o).

**Section 1.12. “Covered Employment”** means employment on work covered by the Collective Bargaining Agreement, employment with the Northern California Cement Masons Joint Apprenticeship and Training Committee, the Union, or any of its affiliated local unions for which Contributions are made to the Pension Fund under regulations adopted by the Board of Trustees. “Hours Worked in Covered Employment” means all Hours Worked for which Employer Contributions are made or are required to be made to the Fund.

**Section 1.13. “Employee”** means any employee of an Individual Employer who performs one or more hours of work covered by the Collective Bargaining Agreement. The term “Employee” also includes employees of the Northern California Cement Masons Joint Apprenticeship and Training Committee, the Union or any of its affiliated local unions with respect to whose work Contributions are made to the Fund under regulations adopted by the Board of Trustees, but only to the extent that the inclusion is permitted by existing laws and regulations and subject to the terms and conditions of any those laws or regulations.

Solely for purposes of testing for compliance with the nondiscrimination regulations under Section 401(a)(4) of the Internal Revenue Code, all leased employees who have performed services for a Contributing Employer on a substantially full-time basis for a period of at least one year will be treated as employed by a Contributing Employer except to the extent such leased employees are excluded in accordance with Code Section 414(n)(5).

The term “leased employee” shall refer to any person who is not an Employee of the Contributing Employer and who provide services to the Contributing Employer if such services are provided pursuant to an agreement between the recipient and any other person (referred to as the “leasing organization”), such person has performed such service for the Contributing Employer (or for the Contributing Employer and related persons) on a substantially full-time basis for a period of at least 1 year; and such services are performed under primary direction or control by the Contributing Employer.

A Leased Employee shall not be considered an employee of the Employer if: (i) such employee is covered by a money purchase pension plan providing: (1) a non-integrated employer contribution rate of at least 10 percent of compensation, as defined in Section 415(c)(3) of the Internal Revenue Code, but including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee’s gross income under Section 125, Section 402(e)(3), Section 402(h)(1)(B), or Section 403(b) of the Internal Revenue Code, (2) immediate participation, and (3) full and immediate vesting; and (ii) Leased Employees do not constitute more than 20 percent of the Employer’s non-highly compensated work force.

**Section 1.14. “Employer Contribution” or “Contributions”** means the payment made or required to be made to the Fund by any Individual Employer.

“Employer Contribution” or “Contributions” also includes payments otherwise required to be made by an Individual Employer, except as suspended under special collective bargaining agreements for the period of September 1, 1988 through August 31, 1989.

The contributions required to pay for the hours credited for periods of Qualified Military Service will be allocated from general assets of the Fund, and no Individual Employer will be liable to make contributions for those hours.

Contributions for periods of Qualified Military Service will be based on the Employer contribution rate that would have otherwise applied if the Participant had not entered Qualified Military Service, but continued to work in Covered Employment. The hours for which such contributions are granted will be credited in accordance with Section 6.05.b.

**Section 1.15. “Highly Compensated Employee”**

- a. The term “highly compensated employee” includes highly compensated active employees and highly compensated former employees of an Employer. Whether an individual is a highly compensated employee is determined separately with respect to each Employer, based solely on that individual’s compensation from or status with respect to that Employer.
- b. Effective September 1, 1997, a Highly Compensated Employee is any employee who:
  - (1) Was a 5-percent owner of the Employer at any time during the year or the preceding year,  
or
  - (2) For the preceding year
    - (a) Had compensation from the Employer in excess of \$80,000 (as adjusted annually for increases in the cost-of-living in accordance with regulations prescribed by the Secretary of the Treasury), and
    - (b) Was in the top-paid group of employees for such preceding year. An employee is in the top-paid group of employees for any year if such employee is in the group consisting of the top twenty percent of the total employees when ranked by compensation paid during such year.
    - (c) For purposes of determining if an employee’s compensation from an Employer exceeds \$80,000 (adjusted for the cost of living) in the preceding year, the preceding year will be the calendar year beginning within the Plan Year immediately preceding the Plan Year for which the test is being applied.

**Section 1.16. “Hours Worked”** means hours for which an Employee is paid, or entitled to payment for the performance of duties for a Contributing Employer and hours for which back pay, irrespective of mitigation of damages, is awarded or agreed to by a Contributing Employer, to the extent that the award or agreement is intended to compensate an Employee for periods during which the employee would have been engaged in the performance of duties for the Contributing Employer.

**Section 1.17. “Local Union”** means any local union affiliated with the Union whose members perform work covered by the Master Agreement.



**Section 1.18. “Non-Bargained Employee”** means a Participant whose participation is not covered by the Collective Bargaining Agreement.

**Section 1.19. “Normal Retirement Age”** means age 65 or, if later, the age of the Participant on the fifth anniversary of his participation, disregarding participation before September 1, 1988. For all other Participants, “Normal Retirement Age” means age 65 or, if later, the age of the Participant on the tenth anniversary of his participation.

Participation before a Permanent Break in Service and participation before a temporary Break in Service in the case of a former Participant who has not returned to Covered Employment and re-established participation in accordance with Section 2.04 will not be counted.

**Section 1.20. “Participant”** means a Pensioner or an Employee who meets the requirements for participation in the Plan as set forth in Article 2, or an Employee who has attained Vested Status under this Plan and has Separated from Covered Employment. A “Vested Participant” is an Employee who qualifies for a Deferred Vested Pension in accordance with the provisions of Section 3.16.

**Section 1.21. “Pension Fund” or “Fund”** means the trust fund created and established by the Trust Agreement.

**Section 1.22. “Pension Plan” or “Plan”** means the Pension Plan established by the Collective Bargaining Agreement and the Trust Agreement, including any amendment, extension or renewal of the Plan.

**Section 1.23. “Pensioner”** means a retired Employee receiving pension benefits under the Plan and any other person to whom a pension would be paid but for the time required for administrative processing. A Pensioner who has returned to Covered Employment and is accruing benefits on the same basis as other Employees as of the effective date of a benefit increase will not be considered a Pensioner for purposes of that benefit increase.

**Section 1.24. “Plan Credit Year”** means the period February 1 of any year to January 31 of the succeeding year. For purposes of the Employee Retirement Income Security Act of 1974 (ERISA) regulations, the Plan Credit Year will serve as the vesting computation period and benefit accrual computation period and, after the initial period of employment, the computation period for eligibility to participate in the Plan.

**Section 1.25. “Plan Year”** means the Fund’s fiscal year, the period from September 1 of any year through August 31 of the succeeding year.

**Section 1.26. “Qualified Domestic Relations Order,”** means a domestic relations order which has been determined, under procedures established by the Board, to be a qualified domestic relations order as defined in Section 206(d)(3) of ERISA.

**Section 1.27. “Qualified Military Service”** means a Participant’s qualified military or other uniformed service period under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, (USERRA) and Section 414(u) of the Internal Revenue Code.

- a. Notwithstanding any provisions in the Plan to the contrary, contributions, vesting, benefits, and service credit with respect to Qualified Military Service will be provided in accordance with USERRA and Section 414(u) of the Internal Revenue Code for Participants who return to Covered Employment (or make themselves available for Covered Employment) from Military Service. Qualified Military Service will be counted for purposes of earning Benefit Units, benefit accruals, Credited Future Service, avoiding a Break in Service, and preventing a Separation from Covered Employment provided the following conditions are satisfied.
  - (1) A Participant must have re-employment rights under USERRA.
  - (2) A Participant must not have incurred a One-Year Break in Service at the time he entered Qualified Military Service.
  - (3) A Participant must have been employed in Covered Employment in the 46 Northern California Counties immediately prior to his Qualified Military Service.
- b. If a Participant dies on or after January 1, 2007 while performing Qualified Military Service, the deceased Participant's beneficiaries shall be entitled to any additional benefits (other than benefit accruals relating to the period of Qualified Military Service) that would have been provided under the Plan if such Participant had resumed Covered Employment and then terminated Covered Employment on account of death. In addition, the period of such Participant's Qualified Military Service shall be treated as vesting service under the Plan.

**Section 1.28. "Required Beginning Date"** is April 1 of the calendar year following the year the Participant reaches age 70½.

**Section 1.29. "Spouse"** means a person to whom a Participant is legally married. The term also includes a former spouse of a Participant to the extent required by a Qualified Domestic Relations Order or by any law of the United States.

**Section 1.30. "Trust Agreement"** means the Trust Agreement establishing the Cement Masons Pension Trust Fund for Northern California, including any amendment, extension or renewal.

**Section 1.31. "Union"** means the District Council of Plasterers and Cement Masons of Northern California.

**Section 1.32. "Retroactive Annuity Starting Date"**

- a. A Retroactive Annuity Starting Date is an Annuity Starting Date that is affirmatively elected by a Participant that occurs on or before the date the written explanation of benefit payment options described in Section 1.02 and Article 7 is provided to the Participant.
- b. Benefits payable under a Retroactive Annuity Starting Date shall consist of an initial single sum payment of benefits attributable to the period beginning on the Participant's Retroactive Annuity Starting Date and ending prior to the first of the month benefit payments commence. Such single sum shall include interest at an appropriate rate from the date the missed payment or payments would have been made to the date of the actual make-up payment. The Board of Trustees has determined the interest rate to be 4% simple interest which shall remain in effect until such time as changed by a motion adopted by the Board. Monthly payments made subsequent to the lump sum payment shall be in the amount that would have

been paid to the Participant had payments actually commenced on the Participant's Retroactive Annuity Starting Date.

- c. A Participant who otherwise satisfies the conditions of Subsection a., but who does not affirmatively elect a Retroactive Active Annuity Starting Date shall have his benefit calculated under the terms, conditions and circumstances applicable to his Annuity Starting Date as determined under Section 1.02 in lieu of benefit payments described in Subsection b. above. In the case of a Participant who retires after Normal Retirement Age, the benefit shall be actuarially increased based on the provisions contained in Section 10.08.
- d. The calculation of benefits – whether under Subsection b. or c., above – shall not include periods during which the Participant was not retired or benefits were otherwise subject to suspension under Sections 10.11 and 10.12.
- e. Any election of the benefit under Subsection b. in lieu of that in Subsection c., shall be subject to the notice and consent requirements including but not limited to those of Code §§401(a)(11) and 417 and regulations issued thereunder, including requirements specific to the election of retroactive payments under Treas. Reg. §1.417(e)-1.
- f. For purposes of satisfying the 30-day waiver requirement under Section 1.02.b.(1) the consent requirements under Section 7.03.b. the Annuity Starting Date defined in Section 1.02 shall be used instead of the Retroactive Annuity Starting Date.

Notwithstanding any other provision contained herein, this Section 1.32 shall be interpreted with the intent of complying with the retroactive annuity starting date requirements of Treas. Reg. §§1.417(e)-1(b)(3)(iv), 1.417(e)-1(b)(3)(v) and 1.417(e)-1(b)(3)(vi).

**Section 1.33.** Other terms specially defined in the Plan include the following:

Term	Section
a. Benefit Units	6.04
b. Break in Service	
One-Year Break-in-Service	6.06
Permanent Break-in-Service	6.06
c. Credited Service (Years of Credited Service)	
Credited Past Service	6.02
Credited Future Service	6.03
d. ERISA	2.01
e. Joint-and-Survivor Pension	7.01
f. Pensions	
Deferred Vested Pension	3.16 and 3.17
Disability Pension	3.06 and 3.07
Early Retirement Pension	3.04 and 3.05
Reciprocal Pension	4.08 and 4.09
Regular Pension	3.02 and 3.03
Service Pension	3.14 and 3.15
g. Retired or Retirement	10.11
h. Separations from Covered Employment	6.07
i. Total Disability	3.08

## **ARTICLE 2 PARTICIPATION**

### **Section 2.01. Purpose**

This Article contains definitions to meet certain requirements of the Employee Retirement Income Security Act of 1974 (otherwise referred to as ERISA). Once an Employee has become a Participant, he receives Credited Service and Benefit Units for employment before he became a Participant in accordance with the provisions of Article 6.

### **Section 2.02. Participation**

An Employee who works in Covered Employment will become a Participant in the Plan on the February 1 or August 1 following a 12-consecutive-month period during which he worked at least 300 hours in Covered Employment. The 300-hour requirement may also be completed with Hours Worked in Continuous Non-Covered Employment with a Contributing Employer.

After the 12-consecutive-month period used to determine an Employee's initial eligibility for participation, the Plan Credit Year which includes the first anniversary of the Employee's qualifying Hours Worked in Covered Employment and subsequent Plan Credit Years will serve as the computation period for continued eligibility to participate in the Plan.

### **Section 2.03. Termination of Participation**

A Participant who incurs a One-Year Break in Service will cease to be a Participant as of the last day of the Plan Credit Year which constituted the One-Year Break in Service, unless he is a Pensioner or Vested Participant.

### **Section 2.04. Reinstatement of Participation**

An Employee who has lost his status as a Participant in accordance with Section 2.03 will become a Participant by meeting the requirements of Section 2.02 within a Plan Credit Year on the basis of Hours Worked in Covered Employment and Continuous Non-Covered Employment after the Plan Credit Year during which participation terminated.

### **Section 2.05. Pensioners are Participants**

A Pensioner receiving a pension from the Fund is a Participant in the Plan.

## **ARTICLE 3 PENSION ELIGIBILITY AND AMOUNTS**

### **Section 3.01. General**

- a. This Article sets forth the eligibility conditions and amounts payable for the pensions provided by the Plan. The benefit formulas described in this Article apply to pensions with Annuity Starting Dates on or after the effective date(s) shown. Unless otherwise indicated, a pension with an Annuity Starting Date prior to the effective date(s) of the benefit formula(s)

shown in this Article is subject to the benefit formula(s) in effect on the Annuity Starting Date of that pension.

The accumulation and retention of Benefit Units and Credited Service for eligibility are subject to the provisions of Article 6. The pension amounts are subject to reduction on account of the Husband- and-Wife Pension as described in Article 7. Entitlement to pension benefits is subject to an eligible Participant's retirement and application for benefits, as provided in Article 10.

Eligibility in most instances depends upon Credited Service, which is defined in Sections 6.02 and 6.03, and takes into account creditable employment both before and after Contributions began. Pension amounts (and in some instances eligibility) are based on accumulated Benefit Units as defined in Section 6.04 which also takes into account creditable employment both before and after Contributions began.

- b. Pensions Effective Prior to September 1, 1976. Pensioners receiving pensions with an effective date prior to September 1, 1976 will continue to receive the pensions awarded to them without change, subject to the provisions of Sections 3.08, 3.09, 3.12, 3.13, 9.02, 10.01.b., 10.02-10.05, 10.09, 10.11-10.18, 11.04-11.05, and 13.01 of this Plan.

### **Section 3.02. Regular Pension - Eligibility**

A Participant who has retired is entitled to receive a Regular Pension if:

- a. he has received credit for 700 Hours Worked in Covered Employment after January 1, 1959; and
- b. he has attained age 65 and is vested in accordance with Subsection 3.16.c.; or
- c. he has attained Normal Retirement Age in accordance with Section 1.19.

### **Section 3.03. Amount of the Regular Pension**

- a. A Regular Pension effective on or after July 1, 2003, will be a monthly amount determined as follows:
  - (1) If there has been no Separation from Covered Employment, the monthly amount of the Regular Pension is the sum of:
    - (a) \$25.75 for each Benefit Unit earned as a result of employment before February 1, 1959, plus any fraction of a Benefit Unit; and
    - (b) \$50.00 for each Benefit Unit earned as a result of employment after January 31, 1959 and before February 1, 1980, plus any fraction of a Benefit Unit; and
    - (c) 4% of Contributions made for Hours Worked in Covered Employment after January 31, 1980 and before July 1, 2003, excluding any Contributions made in a Plan Credit Year during which the Participant failed to work a minimum of 300 hours; and

- (d) 4% of the first \$3.20 per hour in Contributions made for Hours Worked in Covered Employment after June 30, 2003 and before February 1, 2004, excluding any Contributions made in a Plan Credit Year during which the Participant failed to work a minimum of 300 hours; and
- (e) 2% of the first \$3.20 per hour in Contributions made for Hours Worked in Covered Employment after January 31, 2004 and before July 1, 2004, excluding any Contributions made in a Plan Credit Year during which the Participant failed to work a minimum of 300 hours; and
- (f) 2% of the first \$3.25 per hour in Contributions made for Hours Worked in Covered Employment after June 30, 2004 and before July 1, 2005, excluding any Contribution made in a Plan Credit Year during which the Participant failed to work a minimum of 300 hours; and
- (g) 2% of the first \$3.20 per hour in Contributions made for Hours Worked in Covered Employment after June 30, 2005, excluding any Contributions made in a Plan Credit Year during which the Participant failed to work a minimum of 300 hours.
- (h) Notwithstanding subparagraph (g), for all Participants engaged in Covered Employment under Collective Bargaining Agreements containing provisions consistent with the terms of the Alternative Schedule of the Funding Improvement Plan adopted June 22, 2012, the monthly benefit for Hours Worked in Covered Employment on or after the later of February 1, 2014 or the effective date of the Collective Bargaining Agreement is 1.75% of the first \$3.20 per hour in Contributions made for Hours Worked in Covered Employment, excluding any Contributions made in a Plan Credit Year during which the Participant failed to work a minimum of 300 hours.
- (i) Notwithstanding subparagraph (g), effective February 1, 2014, for all Participants engaged in Covered Employment under Collective Bargaining Agreements containing provisions consistent with the terms of the Default Schedule of the Funding Improvement Plan adopted June 22, 2012, the monthly benefit for Hours Worked in Covered Employment on or after the later of February 1, 2014 or the effective date of the Collective Bargaining Agreement is 0.75% of the first \$3.20 per hour in Contributions, excluding any Contributions made in a Plan Credit Year during which the Participant failed to work a minimum of 300 hours.

For purposes of this Section 3.03.a.(1), “Contributions” has the same meaning as the term Contributions as defined in Section 1.14 and shall consist of payments made or required to be made to the Fund by any Individual Employer under the terms of a Collective Bargaining Agreement.

- (2) If there has been a Separation from Covered Employment, the monthly amount of the Regular Pension is the sum of:
  - (a) an amount determined in accordance with Subsection a. above accrued after the most recent Separation from Covered Employment; and

- (b) the monthly amount payable for service prior to any Separation from Covered Employment is the amount which was payable by the Plan at the end of the separation period. However, in no event will the monthly amount payable for each Benefit Unit earned prior to February 1, 1980 be less than \$19.00.

#### **Section 3.04. Early Retirement Pension - Eligibility**

A Participant who has retired is entitled to receive an Early Retirement Pension, if:

- a. he has become age 55, but not yet become age 65; and
- b. he has at least 10 Years of Credited Service (without a Permanent Break in Service), exclusive of any Credited Future Service earned as a result of work in Continuous Non-Covered Employment; and
- c. he has received credit for at least 700 Hours Worked in Covered Employment since January 1, 1959.

#### **Section 3.05. Amount of the Early Retirement Pension**

The Early Retirement Pension will be a monthly amount determined as follows:

- a. First, determine the amount of the Regular Pension to which the Participant would be entitled if he were 65 years of age at the time his Early Retirement Pension is to be effective.
- b. Second, to take account of the fact the Participant is younger than 65, reduce the first amount by  $\frac{1}{2}$  of 1 % for each month that the Participant is younger than 65 on the effective date of his Early Retirement Pension.

#### **Section 3.06. Disability Pension - Eligibility**

A totally disabled Participant who has retired is entitled to receive a Disability Pension if he meets the following requirements:

- a. he has not become age 65; and
- b. he has at least 10 Years of Credited Service (without a Permanent Break in Service), exclusive of any Credited Future Service earned as a result of work in Continuous Non-Covered Employment; and
- c. he has, as a result of actual work in Covered Employment, earned at least one quarter of Credited Service in the 2 consecutive Plan Credit Years prior to, or during, the Plan Credit Year in which he becomes totally disabled.

#### **Section 3.07. Amount of the Disability Pension**

- a. The amount of a Disability Pension effective on or after September 1, 1997, will be a monthly amount equal to the sum of:

- (1) \$50.00 for each Benefit Unit, plus any fraction of a Benefit Unit, accumulated after the most recent Separation from Covered Employment (if any); and
  - (2) a monthly amount payable for each Benefit Unit accrued prior to any Separation from Covered Employment, as follows: The monthly amount payable for each Benefit Unit earned prior to any Separation from Covered Employment is the amount which was payable by the Plan at the end of the separation period (but not less than \$19.00).
- b. Only the 30 Benefit Units earned most recently will be used to compute the maximum amount of the Disability Pension.
  - c. In no circumstances will the monthly amount of the Disability Pension be less than the accrued Regular Pension as determined in Section 3.03, actuarially adjusted in accordance with the formula set forth in Section 3.05, with the total reduction not to exceed 60%.

### **Section 3.08. Total Disability Defined**

A Participant will be deemed totally disabled upon determination by the Social Security Administration that he is entitled to a Social Security Disability Benefit, in accordance with his Old Age, Survivors and Disability Insurance coverage. The Board may, in its sole and absolute judgment, grant a Disability Pension in the absence of an award by the Social Security Administration, provided the Board finds that:

- a. on the basis of competent medical evidence as the Board may require to be shown, the Participant is totally unable, as a result of a physical or mental impairment, to engage in or perform work as a cement mason in the Building and Construction Industry; and
- b. the total disability is expected to result in death or to be of a continued and indefinite duration.

The Board may at any time, or from time to time, require evidence of continued entitlement to Social Security Disability Benefits and may at any time, notwithstanding the prior granting of a Disability Pension under the Plan, require that a Participant satisfy the provisions of this Section as a prerequisite to the continuance of the Disability Pension granted under the Plan.

### **Section 3.09. Disability Pension Payments**

- a. Payment of the Disability Pension will not begin until 6 full calendar months of total disability have passed or until the requirement for advance application has been met, whichever is later. Payment of the Disability Pension will continue as long as the disabled Pensioner remains Totally Disabled as defined by the Plan. Once a disabled Participant becomes age 65, his benefits will continue, regardless of whether he remains Totally Disabled, as long as he remains retired as defined in Section 10.11.b.
- b. Effective September 1, 1989, if the Annuity Starting Date for a Participant who is Totally Disabled is after the date payment would have begun in accordance with paragraph a., that Participant will be entitled to a one time cash payment equal to the monthly amount of his Disability Pension, in the payment form elected, multiplied by the number of calendar months between the date determined in accordance with paragraph a. and the Annuity Starting Date.



### **Section 3.10. Total Disablement of a Pensioner Receiving an Early Retirement Pension**

If a Pensioner receiving an Early Retirement Pension was totally disabled on the date his Early Retirement Pension became effective and had, as a result of actual employment, earned at least one quarter of Credited Service in the 2 consecutive Plan Credit Years prior to the Plan Credit Year in which he became totally disabled, he will be entitled to a Disability Pension under the following conditions:

- a. If the beginning of the seventh month of total disability, as defined in Section 3.08, is coincident with or prior to the effective date of his Early Retirement Pension, his Disability Pension will be effective as of the effective date of his Early Retirement Pension, or with the seventh month of disability, if the filing requirement set forth in Section 10.01 is met.
- b. If the seventh month of total disability, as defined in Section 3.08, begins after the effective date of his Early Retirement Pension, then the higher amount of the Disability Pension will not become payable until the first day of the month following the month when the difference between the Early Retirement Pension amount and the Disability Pension amount equals the amount paid to him as an Early Retirement Pension prior to the beginning of the seventh month of total disability.

### **Section 3.11. Total Disablement of a Participant Entitled to a Service Pension**

If a Participant entitled to a Service Pension is or becomes totally disabled, he may receive a Disability Pension instead of a Service Pension, if he files a written application with the Board of Trustees.

### **Section 3.12. Recovery by a Pensioner on a Disability Pension**

If a Pensioner on a Disability Pension who is under age 65 (a) loses entitlement to a Social Security Disability Benefit, or (b) otherwise recovers from his disability, that information must be reported in writing to the Board within 21 days of the date he (1) received notice from the Social Security Administration of the termination of his Benefit, or (2) otherwise recovered from his disability. If written notice is not provided he may, upon his subsequent retirement prior to Normal Retirement Age, be disqualified for benefits for a period of up to 12 months following the date of his retirement, in addition to the months which may have elapsed since he (i) received notice of the termination of the Social Security Disability Benefit, or (ii) recovered from his disability and in which he received Disability Pension payments from the Fund, subject to the provisions of Section 10.12.

If a Pensioner receiving a Disability Pension (who has attained age 55 and has at least 25 Benefit Units) recovers from his disability, as described above, he may receive a Service Pension, not to exceed the amount payable for a Service Pension at the time his former Disability Pension became effective — plus any increase granted to Pensioners with the same Annuity Starting Date — unless he returns to Covered Employment. If he returns to Covered Employment, the amount of his Service Pension will be determined in accordance with Subsection 3.15.b.

A Disability Pensioner who recovers and subsequently establishes his entitlement to a Disability Pension, under Section 3.08 of the Plan, must again satisfy the 6-month waiting period described in Section 3.09 before Disability Pension Benefits can begin.

### **Section 3.13. Re-employment of a Pensioner on a Disability Pension**

A Pensioner on a Disability Pension who is no longer totally disabled may re-enter Covered Employment and may resume the accrual of Credited Service and Benefit Units.

### **Section 3.14. Service Pension — Eligibility**

A Participant who has retired is entitled to a Service Pension if he meets the following requirements:

- a. he has attained age 55 and has at least 25 Benefit Units (without a Permanent Break in Service) or he has attained age 62 and has at least 20 Benefit Units (without a Permanent Break in Service); and
- b. he had not received an Early Retirement Pension before February 1, 1971; and
- c. he has received credit for at least 700 Hours Worked in Covered Employment since January 1, 1959.

### **Section 3.15. Amount of the Service Pension**

- a. The monthly amount of the Service Pension is determined in the same way as the monthly amount of the Regular Pension.
- b. If a Pensioner in receipt of a Service Pension returns to Covered Employment at a time when he is younger than age 65, his Service Pension will be increased by the monthly benefit payable under Subsection 3.03.a. at the time of his subsequent retirement for each Benefit Unit earned after his return to Covered Employment.

This method of redetermining the amount of a Service Pension effective prior to September 1, 1984 will be applied to the 30 Benefit Units earned most recently.

### **Section 3.16. Deferred Vested Pension — Eligibility**

A Participant who has had a Separation from Covered Employment is entitled to a Deferred Vested Pension at retirement if he meets the following requirements:

- a. he has received credit for at least 700 Hours Worked in Covered Employment after January 1, 1959; and
- b. he has attained age 65 or is between the ages of 55 and 65 and has met the requirements of an Early Retirement Pension, as set forth in Subsection 3.04.b. or a Service Pension, as set forth in Subsection 3.14.a.; and
- c. he has achieved Vested Status under the circumstances described below:

- (1) A Participant who works at least one hour in Covered Employment on or after January 1, 1997 will attain Vested Status after he has accumulated 5 Years of Credited Service. If

he does not work at least one hour in Covered Employment after January 1, 1997, he may achieve Vested Status in accordance with paragraph (2).

- (2) A Participant who worked at least 300 hours in Covered Employment between September 1, 1996 and January 1, 1997 achieved Vested Status if he accumulated at least 8 Years of Credited Service. If he did not work at least 300 hours in Covered Employment after September 1, 1996, he may achieve Vested Status in accordance with paragraph (3).
- (3) A Participant who is a Non-Bargained Employee and who worked at least one hour in Covered Employment on or after September 1, 1989 achieved Vested Status after he had accumulated 5 Years of Credited Service. However, if the Non-Bargained Employee was not a Participant or did not work at least one hour in Covered Employment on or after September 1, 1989, he may achieve Vested Status in accordance with paragraph (4).
- (4) A Participant with a separation date between September 1, 1976 and September 1, 1996 achieved Vested Status if he had accumulated at least 10 Years of Credited Service; or
- (5) A Participant with a separation date between February 1, 1972 and September 1, 1976 achieved Vested Status if he had accumulated at least 10 Benefit Units; or
- (6) A Participant with a separation date between January 1, 1964 and February 1, 1972 achieved Vested Status if he had accumulated at least 15 Benefit Units; or
- (7) A Participant with a separation date between February 1, 1962 and January 1, 1964 achieved Vested Status if he had attained age 55 and accumulated at least 15 Benefit Units; or
- (8) A Participant with a separation date between February 1, 1959 and February 1, 1962 achieved Vested Status if he had attained age 65 and accumulated at least 15 Benefit Units.

For purposes of determining Vested Status under the above paragraphs (1) through (8), the following will apply:

- (a) Years of Credited Service or Benefit Units earned prior to a Permanent Break in Service will not be counted.
- (b) Credit for periods of Qualified Military Service will be counted.

### **Section 3.17. Amount of the Deferred Vested Pension**

- a. The monthly amount of the Deferred Vested Pension will be based on the formula that was payable by the Plan at the end of the separation period. The end of the separation period is determined as follows:
  - (1) on or after February 1, 1976, the end of a separation period is January 31 of any 2 consecutive Plan Credit Years in which the Participant does not work at least 300 hours in Covered Employment.

(2) prior to February 1, 1976, the end of a separation period is January 31 of any 2 consecutive Plan Credit Years in which the Participant does not earn one quarter of Credited Future Service.

b. In no event, will the monthly amount payable for each Benefit Unit earned prior to February 1, 1980 be less than \$19.00.

**Section 3.18. Non-duplication of Pensions**

A person is entitled to the payment of only one type of pension under this Plan at any one time.

**Section 3.19. Adjustment to Pension**

A Pensioner or Beneficiary receiving a Regular, Early, Disability, or Service Pension or who is receiving a Pro-Rata or Partial Pension (the major portion of whose Combined Credited Service is Northern California Credited Service) will have his pension increased by a supplemental benefit each month in an amount set forth below and subject to the conditions described below:

a. For pensions effective on and after January 1, 1987:

(1) Determine the monthly supplemental amount to be applied to the period during which the Participant incurred a Separation from Covered Employment, according to the following schedule:

<b>Separation from Covered Employment</b>	<b>Monthly Supplemental Amount</b>
Prior to September 1, 1987	\$0
September 1, 1988 through August 31, 1988	\$80
September 1, 1988 through August 31, 1997	\$140
September 1, 1997 and later	\$240

(2) Multiply the monthly supplemental amount in a.(1) above by the following fraction (except that the quotient of that fraction cannot exceed one):

Participant's Years of Credited Service

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Total Years of Credited Service if Participant had worked under Plan until the age at which he first became eligible for a Regular, Early, or Service Pension

The result is the monthly supplemental benefit.

(3) Additional Conditions.

(a) The supplemental benefit as described in Subsection a.(1) above is subject to the reduction for the Joint-and-Survivor Pension described in Article 7.

- (b) Beneficiaries who are entitled to receive benefits under Section 7.01 will receive 50% of the monthly supplemental benefit.
  - (c) For Participants retiring on an Early Retirement Pension, the reduction factor for early retirement will not apply to the supplemental benefit.
  - (d) For Participants engaged in Covered Employment under Collective Bargaining Agreements containing provisions consistent with the terms of the Alternative Schedule of the Funding Improvement Plan adopted June 22, 2012 any portion of the monthly supplemental benefit earned on or after the later of February 1, 2014 or the effective date of the Collective Bargaining Agreement shall be reduced by 12.5%.
  - (e) For Participants engaged in Covered Employment under Collective Bargaining Agreements containing provisions consistent with the terms of the Default Schedule of the Funding Improvement Plan adopted June 22, 2012, the portion of the supplemental benefit earned on or after the later of February 1, 2014 or the effective date of the Collective Bargaining Agreement shall be reduced by 62.5%.
- b. For Pensions effective prior to September 1, 1997. Pensions effective prior to September 1, 1997 must be based in part upon a minimum of 500 hours of work in Covered Employment in the 12-month period immediately preceding the pension effective date.
- (1) For Pensions effective prior to September 1, 1993, all Pensioners and Beneficiaries will receive a supplemental benefit of \$150.00 per month, except that Beneficiaries who are entitled to receive benefits under Section 7.01 will receive a supplemental benefit of \$75.00 per month.
  - (2) For Pensions effective prior to September 1, 1996, all Pensioners and Beneficiaries will receive a supplemental benefit of \$25.00 per month, except that Beneficiaries who are entitled to receive benefits under Section 7.01 will receive a supplemental benefit of \$12.50 per month.
  - (3) For Pensions effective prior to September 1, 1997, all Pensioners and Beneficiaries will receive a supplemental benefit of \$30.00 per month, except that Beneficiaries who are entitled to receive benefits under Section 7.01 will receive a supplemental benefit of \$15.00 per month.

## **ARTICLE 4 PRO RATA PENSION**

### **Section 4.01. Purposes**

Pro Rata Pensions are provided under this Plan for Employees:

- a. who would otherwise be ineligible for a pension because their years of employment have been divided between employment creditable under this Plan and employment creditable under another pension plan, or

- b. whose pensions would otherwise be less than the full amount because of a division of employment.

#### **Section 4.02. Related Plans**

By resolution duly adopted, the Board of Trustees may recognize other pension plans as Related Plans under this Article.

#### **Section 4.03. Related Hours**

The term “Related Hours” means hours of employment which are creditable under a Related Plan.

#### **Section 4.04. Related Credit**

The term “Related Credit” means Credited Service, or any portion credited to an Employee under a Related Plan, excluding any Related Credit based on work of the type which, had it been performed under this Plan, would be Continuous Non-Covered Employment. No more than one year of Related Credit will be recognized for employment under a Related Plan during any consecutive 12-month period.

#### **Section 4.05. Combined Credited Service**

The term “Combined Credited Service” means the total of an Employee’s Related Credit plus Northern California Credited Service, excluding any Credited Service earned in Continuous Non-Covered Employment.

#### **Section 4.06. Combined Benefit Units**

The term “Combined Benefit Units” means the total of an Employee’s Related Credit plus Northern California Benefit Units.

#### **Section 4.07. Non-Duplication**

An Employee cannot receive double credit for the same period of employment. No more than one Year of Combined Credited Service or one Combined Benefit Unit will be given for employment in any consecutive 12-month period.

#### **Section 4.08. Eligibility for a Pro Rata Pension**

- a. An Employee who has retired is eligible for a Pro Rata Pension if he meets the following requirements:
  - (1) he would be eligible for a Regular, Early Retirement, Disability or Deferred Vested Pension under this Plan were his Combined Credited Service treated as Northern California Credited Service, and

(2) he has worked after January 1, 1959 for at least 700 hours for which contributions were made or were required to be made to this Fund or to a Related Plan under a collective bargaining agreement.

- b. Related Hours will be considered in determining whether an Employee has incurred a Break in Service as defined in Section 6.06 or a Separation from Covered Employment as defined in Section 6.07.

However, the determination as to whether an Employee has had a Permanent Break in Service under this Plan will be based solely on the Credited Service earned under this Plan and not upon the Employee's Combined Credited Service.

- c. Related Credits can only be used to determine an Employee's eligibility for monthly pension payments to a Pensioner (including a Disability Pension) and for vesting in a Deferred Vested Pension, or the eligibility of his surviving Spouse for benefits under Article 7 or Section 8.01.

#### **Section 4.09. Amount of the Pro Rata Pension**

The monthly amount of a Pro Rata Pension effective on or after September 1, 1984 will be determined in the same way as the Regular, Early Retirement or Disability Pension.

#### **Section 4.10. Payment**

Payment of a Pro Rata Pension is subject to all of the conditions applicable to the other types of pensions under this Plan.

#### **Section 4.11. General**

The provisions of this Article will not apply to a Pension Plan that is signatory to the "Pro Rata Pension Agreement of Operative Plasterers' and Cement Masons' International Association of the United States and Canada," unless the Board of Trustees has specifically recognized that plan as a Related Plan under this Article by a resolution adopted under Section 4.02. In the absence of a resolution, the provisions of Article 5 will apply with respect to agreement for "Partial Pensions" with Pension Plans signatory to the "Pro Rata Pension Agreement of Operative Plasterers' and Cement Masons' International Association of the United States and Canada." The provisions of Article 5 will not void, change or replace the provisions of this Article with respect to Related Credit specifically recognized under this Article.

An Employee who is eligible for a Pro Rata Pension under this Article may not receive a Partial Pension, the provisions of Article 5 notwithstanding.

### **ARTICLE 5 PARTIAL PENSION**

#### **Section 5.01. Purpose**

Partial Pensions are provided under this Plan for employees who would otherwise lack sufficient service credit to be eligible for any pension because their years of employment were divided

between different pension plans or, if eligible, whose pensions would be less than the full amount because of a division of employment.

### **Section 5.02. Related Plans**

By resolution duly adopted, the Trustees of this Pension Fund recognize one or more other pension plans, which have executed a Pro Rata Agreement to which this Plan is a party, as a Related Plan.

### **Section 5.03. Related Plan Service Credits**

Service Credits accumulated and maintained by an employee under a Related Plan will be recognized under this Plan as Related Plan Service Credits if the employee has at least 2 years of service credit in that plan based on employment since January 1, 1955, for which contributions have been made. The Trustees will compute Related Plan Service Credits on the basis on which that credit has been earned and credited under the Related Plan and certified by the Related Plan to this Plan.

### **Section 5.04. Combined Service Credit**

The total of an employee's service credit under this Plan and Related Plan Service Credit comprise the employee's Combined Service Credit. No more than one year of Combined Service Credit will be counted in any calendar year.

### **Section 5.05. Eligibility**

An employee is eligible for a Partial Pension under this Plan if he satisfies all of the following requirements:

- a. he would be eligible for any type of pension under this Plan (other than a Partial Pension) if his Combined Service Credit were treated as service credit under this Plan; and
- b. he has at least 2 years of service credit under this Plan, based on employment since January 1, 1955 for which employer contributions have been made; and
- c. he is found to be (1) eligible for a Partial Pension from a Related Plan and (2) eligible for a Partial Pension from the Terminal Plan. The Terminal Plan is deemed to be the Plan associated with the local union which represents the employee at the time of, or immediately prior to, his retirement. If at that time the employee was not represented by any local union, then the Terminal Plan is the one to which the greatest amount of contributions were paid on behalf of the employee in the 36 consecutive calendar months immediately preceding his retirement; and
- d. a pension is not payable to him from a Related Plan independently of its provisions for a Partial Pension. However, an employee who is entitled to a pension other than a Partial Pension from this Plan or a Related Plan may elect to waive the other pension and qualify for a Partial Pension.
- e. Related Plan Service Credits can only be used to determine an Employee's eligibility for monthly pension payments to a Pensioner (including a Disability Pension) and for vesting in



a Deferred Vested Pension or the eligibility of his surviving Spouse for benefits under Article 7 or Section 8.01.

### **Section 5.06. Breaks in Service**

In applying the rules of this Plan with respect to cancellation of service credit, any period in which an employee has earned Related Plan Service Credit will not be counted in determining whether there has been a period of no Covered Employment sufficient to constitute a Break in Service.

### **Section 5.07. Election of Pensions**

If an employee is eligible for more than one type of pension under this Plan, he is entitled to elect the type of pension he is to receive.

### **Section 5.08. Partial Pension Amount**

The amount of the Partial Pension is determined as follows:

- a. compute the amount of the pension to which the employee would be entitled under this Plan, based on his Combined Service Credit, then
- b. divide the amount of service credit earned under this Plan since January 1, 1955 by the total amount of Combined Service Credit earned by the employee since January 1, 1955, then
- c. multiply the pension amount in a. by the fraction determined in b. and the result is the Partial Pension amount payable by this Plan.

### **Section 5.09. Payment of Partial Pensions**

The payment of Partial Pensions will be subject to all of the conditions contained in this Plan which apply to other types of pensions including, but not limited to, the definition of retirement and timely application.

## **ARTICLE 6 ACCUMULATION OF BENEFIT UNITS AND YEARS OF CREDITED SERVICE**

### **Section 6.01. General**

The purpose of this Article is to define the basis on which Participants accumulate Benefit Units and Years of Credited Service. This Article also defines the basis on which accumulated Benefit Units and Years of Credited Service may be canceled.

### **Section 6.02. Years of Credited Service for Periods Before February 1, 1959**

- a. A Participant will be entitled to Credited Past Service for each Plan Credit Year, or portion of a Plan Credit Year, he was regularly employed prior to February 1, 1959, in one or more

classifications included in the Master Agreement on work in the Building and Construction Industry in the 46 Northern California Counties, or was regularly employed by a local union or the Union in a position included under the Plan pursuant to regulations adopted by the Board of Trustees.

A Participant will also be granted Credited Past Service for each Plan Credit Year, or portion of a Plan Credit Year, for military service during a period in the Armed Forces of the United States in time of war or national emergency or under a National Conscription Law for the period during which he retained re-employment rights under federal law; provided (i) the Participant was employed in the 46 Northern California Counties immediately prior to his entry into the Armed Forces on work of the type for which Credited Past Service is granted in Subsection a. above; (ii) he made himself available for employment in the 46 Northern California Counties on work of the type for which Credited Past Service is granted in Subsection a. above within 90 days after his release from active duty or 90 days after recovery from a disability continuing after his release from active duty; and (iii) the Participant furnishes in writing information and proof concerning his availability as the Board may, in its sole discretion, determine. Portions of Credited Past Service will be granted for periods of military service of less than one year.

Employment covered by a pension program of a public agency will not count toward Credited Past Service.

A Participant is entitled to Credited Past Service for each Plan Credit Year in which he was employed in accordance with the following schedule:

<b>Hours Worked in Plan Credit Year</b>	<b>Credited Past Service</b>
Less than 350 hours	None
350 to 699 hours	.25
700 to 1,049 hours	.50
1,050 to 1,399 hours	.75
1,400 hours or more	One Year

- b. Application for entitlement to Credited Past Service must be made on a form approved by the Board and signed by the Participant, which specifies the periods during which the Participant was employed in work entitling him to Credited Past Service and must be confirmed by evidence satisfactory to the Board substantiating the employment claimed by the Participant.

The application will specify all periods for which Credited Service is claimed and, insofar as possible, all Hours Worked for which Credited Service is claimed during each period. Failure to comply with this requirement without good cause, as determined by the Board, will constitute a waiver of any claim for Credited Service for any periods or hours not specified in the application.

The Board may accept as *prima facie* evidence any or all of the following for periods of credit claimed.

- (1) A written statement from any employer certifying that the Participant performed work for that employer entitling him to Credited Past Service.
- (2) A written statement from the secretary or other authorized officer of a local union or the Union, or the membership record from the Operative Plasterers' and Cement Masons' International Association of the United States and Canada showing that the Participant was a member in good standing in the local union, or was employed by the local union or the Union in a position included in the Plan under regulations adopted by the Board.
- (3) A W-2 form or check stub furnished for work performed during the period for any employer known or reputed to have been operating in the Building and Construction Industry in the 46 Northern California Counties during the period.
- (4) A written statement from the Social Security Administration to the effect that according to its records the Participant was employed during the period by a named employer, known or reputed to be operating in the Building and Construction Industry in the 46 Northern California Counties during that period.

**Section 6.03. Years of Credited Service After January 31, 1959**

- a. From February 1, 1959 to February 1, 1971, a Participant will receive Credited Future Service for Hours Worked in Covered Employment during a Plan Credit Year, according to the following schedule:

<b>Hours Worked in Plan Credit Year</b>	<b>Credited Future Service</b>
Less than 350 hours	None
350 to 699 hours	.25
700 to 869 hours	.50
870 hours or more	One Year

- b. From February 1, 1971 to February 1, 1972, a Participant will receive Credited Future Service for Hours Worked in Covered Employment during a Plan Credit Year, depending upon his age, according to the following schedules:
  - (1) In any Plan Credit Year in which a Participant was younger than 55 years of age, he will receive Credited Future Service for Hours Worked in Covered Employment, according to the following schedule:

<b>Hours Worked in Plan Credit Year</b>	<b>Credited Future Service</b>
Less than 350 hours	None
350 to 699 hours	.25
700 to 869 hours	.50
870 hours or more	One Year

- (2) In any Plan Credit Year in which a Participant was or became 55 through 59 years of age, he will receive Credited Future Service for Hours Worked in Covered Employment, according to the following schedule:

<b>Hours Worked in Plan Credit Year</b>	<b>Credited Future Service</b>
Less than 300 hours	None
300 to 599 hours	.25
600 to 869 hours	.50
870 hours or more	One Year

- (3) In any Plan Credit Year in which a Participant was or became 60 or more years of age, he will receive Credited Future Service for Hours Worked in Covered Employment, according to the following schedule:

<b>Hours Worked in Plan Credit Year</b>	<b>Credited Future Service</b>
Less than 250 hours	None
250 to 499 hours	.25
500 to 749 hours	.50
750 to 869 hours	.75
870 hours or more	One Year

- c. From February 1, 1972 to February 1, 1976 a Participant will receive Credited Future Service for Hours Worked in Covered Employment during a Plan Credit Year, depending upon his age, according to the following schedules:

- (1) In any Plan Credit Year in which a Participant was younger than 55 years of age, he will receive Credited Future Service for Hours Worked in Covered Employment, according to the following schedule:

<b>Hours Worked in Plan Credit Year</b>	<b>Credited Future Service</b>
Less than 350 hours	None
350 to 466 hours	.25
467 to 583 hours	.33
584 to 699 hours	.42
700 to 816 hours	.50
817 to 869 hours	.58
870 hours or more	One Year

- (2) In any Plan Credit Year in which a Participant was or became 55 through 59 years of age, he will receive Credited Future Service for Hours Worked in Covered Employment, according to the following schedule:

<b>Hours Worked in Plan Credit Year</b>	<b>Credited Future Service</b>
Less than 300 hours	None
300 to 399 hours	.25
400 to 499 hours	.33
500 to 599 hours	.42
600 to 699 hours	.50
700 to 799 hours	.58
800 to 869 hours	.67
870 hours or more	One Year

- (3) In any Plan Credit Year in which a Participant was or became 60 or more years of age, he will receive Credited Future Service for Hours Worked in Covered Employment, according to the following schedule:

<b>Hours Worked in Plan Credit Year</b>	<b>Credited Future Service</b>
Less than 250 hours	None
250 to 332 hours	.25
333 to 415 hours	.33
416 to 499 hours	.42
500 to 582 hours	.50
583 to 665 hours	.58
666 to 749 hours	.67
750 to 832 hours	.75
833 to 869 hours	.83
870 hours or more	One Year

- d. A Participant will receive Credited Future Service for Hours Worked in Covered Employment during a Plan Credit Year on or after February 1, 1976, according to the following schedule:

<b>Hours Worked in Plan Credit Year</b>	<b>Credited Future Service</b>
Less than 300 hours	None
300 to 499 hours	.25
500 to 749 hours	.50
750 to 869 hours	.75
870 hours or more	One Year

If a Participant works for a Contributing Employer in Continuous Non-Covered Employment, Hours Worked in Continuous Non-Covered Employment after January 31, 1976 will be counted toward a Year of Credited Service. If the Participant does not work sufficient hours for Contributing Employer(s) to earn a full Year of Credited Service in a Plan Credit Year, he will not be entitled to any portion of a Year of Credited Service for hours of work in Continuous Non-Covered Employment.

- e. A Participant will not be entitled to Credited Service for the following periods:
- (1) years preceding a Permanent Break in Service as defined in Subsection 6.06. a. for periods prior to February 1, 1976.
  - (2) years preceding a Permanent Break in Service as defined in Subsections 6.06.c. and d., except as may be required by ERISA regulations.

**Section 6.04. Benefit Units**

- a. A Participant will receive one Benefit Unit or portion of a Benefit Unit for every Year of Credited Past Service, or portion of a Year of Credited Past Service to which he is entitled under Section 6.02.
- b. From February 1, 1959 to February 1, 1971, a Participant will receive Benefit Units for Hours Worked in Covered Employment, according to the following schedule:

<b>Hours Worked in Plan Credit Year</b>	<b>Benefit Units</b>
Less than 350 hours	None
350 to 699 hours	.25
700 to 1,049 hours	.50
1,050 to 1,399 hours	.75
1,400 hours or more	One Year

- c. From February 1, 1971 to February 1, 1972, a Participant will receive Benefit Units for Hours Worked in Covered Employment, depending upon his age, according to the following schedules:

- (1) In any Plan Credit Year in which a Participant was younger than 55 years of age, he will receive Benefit Units for Hours Worked in Covered Employment, according to the following schedule:

<b>Hours Worked in Plan Credit Year</b>	<b>Benefit Units</b>
Less than 350 hours	None
350 to 699 hours	.25
700 to 1,049 hours	.50
1,050 to 1,399 hours	.75
1,400 hours or more	One Year

- (2) In any Plan Credit Year in which a Participant was or became 55 through 59 years of age, he will receive Benefit Units for Hours Worked in Covered Employment according to the following schedule:

<b>Hours Worked in Plan Credit Year</b>	<b>Benefit Units</b>
Less than 300 hours	None
300 to 599 hours	.25
600 to 899 hours	.50
900 to 1,199 hours	.75
1,200 hours or more	One Year

- (3) In any Plan Credit Year in which a Participant was or became 60 or more years of age, he will receive Benefit Units for Hours Worked in Covered Employment, according to the following schedule:

<b>Hours Worked in Plan Credit Year</b>	<b>Benefit Units</b>
Less than 250 hours	None
250 to 499 hours	.25
500 to 749 hours	.50
750 to 999 hours	.75
1,000 hours or more	One Year

- d. From February 1, 1972 to February 1, 1976, a Participant will receive Benefit Units for Hours Worked in Covered Employment, depending upon his age, according to the following schedules:

- (1) In any Plan Credit Year in which a Participant was younger than 55 years of age, he will receive Benefit Units for Hours Worked in Covered Employment, according to the following schedule:

<b>Hours Worked in Plan Credit Year</b>	<b>Benefit Units</b>
Less than 350 hours	None
350 to 466 hours	.25
467 to 583 hours	.33
584 to 699 hours	.42
700 to 816 hours	.50
817 to 933 hours	.58
934 to 1,049 hours	.67
1,050 to 1,166 hours	.75
1,167 to 1,283 hours	.83
1,284 to 1,399 hours	.92
1,400 hours or more	One Year

- (2) In any Plan Credit Year in which a Participant was or became 55 through 59 years of age he will receive Benefit Units for Hours Worked in Covered Employment, according to the following schedule:

<b>Hours Worked in Plan Credit Year</b>	<b>Benefit Units</b>
Less than 300 hours	None
300 to 399 hours	.25
400 to 499 hours	.33
500 to 599 hours	.42
600 to 699 hours	.50
700 to 799 hours	.58
800 to 899 hours	.67
900 to 999 hours	.75
1,000 to 1,099 hours	.83
1,100 to 1,199 hours	.92
1,200 hours or more	One Year

- (3) In any Plan Credit Year in which a Participant was or became 60 or more years of age, he will receive Benefit Units for Hours Worked in Covered Employment, according to the following schedule:

<b>Hours Worked in Plan Credit Year</b>	<b>Benefit Units</b>
Less than 250 hours	None
250 to 332 hours	.25
333 to 415 hours	.33
416 to 499 hours	.42
500 to 582 hours	.50
583 to 665 hours	.58
666 to 749 hours	.67
750 to 832 hours	.75
833 to 915 hours	.83



916 to 999 hours	.92
1,000 hours or more	One Year

- d. From February 1, 1976 to February 1, 1982, a Participant will receive Benefit Units for Hours Worked in Covered Employment, according to the following schedule:

<b>Hours Worked in Plan Credit Year</b>	<b>Benefit Units</b>
Less than 300 hours	None
300 to 399 hours	.21
400 to 499 hours	.29
500 to 599 hours	.36
600 to 699 hours	.43
700 to 799 hours	.50
800 to 899 hours	.57
900 to 999 hours	.64
1,000 to 1,099 hours	.71
1,100 to 1,199 hours	.78
1,200 to 1,299 hours	.85
1,300 to 1,399 hours	.93
1,400 hours or more	One Year

- f. Beginning February 1, 1982, a Participant will receive Benefit Units for Hours Worked in Covered Employment, according to the following schedule:

<b>Hours Worked in Plan Credit Year</b>	<b>Benefit Units</b>
Less than 300 hours	None
300 to 399 hours	.25
400 to 499 hours	.33
500 to 599 hours	.42
600 to 699 hours	.5-
700 to 799 hours	.58
800 to 899 hours	.67
900 to 999 hours	.75
1,000 to 1,099 hours	.83
1,100 to 1,199 hours	.92
1,200 hours or more	One Year

- g. If a Participant earns a Year of Credited Service in a Plan Credit Year after January 31, 1976, but works less than 300 hours in Covered Employment, he will be credited with a prorated

portion of a full Benefit Unit, in the ratio which his hours of work in Covered Employment bear to 2,000 hours.

h. **Exception:** A Participant will not be entitled to Benefit Units for the following periods:

- (1) for the period preceding a Permanent Break in Service as defined in Subsection 6.06.a. for periods prior to February 1, 1976.
- (2) for periods preceding a Permanent Break in Service as defined in Subsections 6.06.c. and d.

**Section 6.05. Credited Service, Benefit Units, and Accrued Benefits for Non-Working Periods After February 1, 1959**

a. Periods of absence from Covered Employment will be credited toward the accumulation of Credited Service, Benefit Units and accrued benefits if they were due to any of the circumstances listed below.

- (1) Service in any of the Armed Forces of the United States, provided (a) the Participant made himself available for Covered Employment in the 46 Northern California Counties during the period in which he retained reemployment rights under USERRA, (b) he was employed in Covered Employment in the 46 Northern California Counties immediately prior to his service in the Armed Forces, and (c) he had not incurred a One-Year Break in Service at the time he entered Qualified Military Service.

Credited Service, Benefit Units, and accrued benefits will be credited for such Qualified Military Service based on the average number of hours worked in a week by the Participant during the twelve-month period immediately preceding such Military Service (or, if shorter, the period of employment immediately preceding the period of Qualified Military Service), but not less than the hours per week indicated in Section 6.05.b. Contributions for Qualified Military Service will be credited as described in Section 1.14.

- (2) Disability for the period for which California UCD benefits were paid, or which constituted a valid waiting period for those benefits.
- (3) Disability for the period for which Workers' Compensation temporary disability benefits were paid, or which constituted a valid waiting period for those benefits.

b. Periods of absence described in a. will be credited as follows:

- (1) For periods from February 1, 1959 to February 1, 1971 and periods after February 1, 1976, 40 hours per week, regardless of the age of the Participant.
- (2) For periods from February 1, 1971 to February 1, 1976:
  - (a) 40 hours per week if the Participant was younger than 55 years of age;
  - (b) 35 hours per week if the Participant was 55 through 59 years of age; and

(c) 30 hours per week if the Participant was 60 or more years of age.

- c. In order to secure credit for the periods of military service or disability as provided in this Section, a Participant must furnish in writing information and proof concerning his military service or disability as the Board may, in its sole discretion, determine.

### **Section 6.06. Breaks in Service - General**

If a person has a Break in Service before he has become a Vested Participant, it has the effect of canceling his participation, his previous Years of Credited Service and his Benefit Units. However, a Break in Service may be temporary, subject to repair by a sufficient amount of subsequent Credited Service. A longer Break in Service may be permanent. The Break-in-Service rule does not apply to a Pensioner or a Vested Participant.

The provisions of Section 5.06 relating to breaks in service apply only to rights under Article 5.

a. Permanent Breaks in Service Before February 1, 1976

Between February 1, 1959 and February 1, 1976, a person incurred a Permanent Break in Service and his Credited Service and accrued benefits were canceled if he failed to earn at least one quarter of Credited Future Service in any period of 2 consecutive Plan Credit Years.

**Exception:** If a Participant who had incurred a Permanent Break in Service subsequently returned to Covered Employment, all of his Credited Service and Benefit Units canceled prior to February 1, 1976 will be reinstated on the last day of any month coincident with or following his subsequent accumulation of 5 Benefit Units, without a Permanent Break in Service.

b. One-Year Break in Service After January 31, 1976

(1) A person has a One-Year Break in Service in any Plan Credit Year after January 31, 1976 in which he fails to work at least 300 hours in Covered Employment or Continuous Non-Covered Employment.

(2) A One-Year Break in Service is repairable, in the sense that its effects are eliminated if, before incurring a Permanent Break in Service, the Employee subsequently earns one quarter of Credited Service. More specifically, previously earned Years of Credited Service and Benefit Units are restored. Nothing in this paragraph (2) will change the effect of a Permanent Break in Service.

c. Permanent Break in Service After January 31, 1976 and Before February 1, 1985

A person will have a Permanent Break in Service if he had consecutive One-Year Breaks in Service, including at least one after January 31, 1976, that equal or exceed the number of full Years of Credited Service which he had previously accumulated.

d.

### Permanent Break in Service After January 31, 1985

A person will have a Permanent Break in Service if he has consecutive One-Year Breaks in Service, including at least one after January 31, 1985, that equal the greater of 5 or the aggregate number of full Years of Credited Service which were previously accumulated.

The foregoing rule will only apply to a Non-Bargained Employee who has at least one hour in Covered Employment after March 31, 1989, if the Break in Service occurs before he has earned 5 Years of Credited Service.

#### e. Grace Periods Before February 1, 1985

A Participant who was absent from Covered Employment will be allowed a grace period not to exceed 3 Plan Credit Years if he failed to earn sufficient Credited Service to prevent a Permanent Break in Service for the following reasons:

- (1) he was totally disabled for work as a cement mason, or
- (2) he was involuntarily unemployed, or
- (3) he was employed in a supervisory capacity in the Building and Construction Industry in the 46 Northern California Counties. However, a Participant may work in a supervisory capacity outside the 46 Northern California Counties during a grace period for a period not to exceed 18 months.

#### f. Grace Periods After January 31, 1985

A Participant who was absent from Covered Employment will be allowed a grace period not to exceed 3 Plan Credit Years, if he failed to earn sufficient Credited Service to prevent a Permanent Break in Service, for the following reasons:

- (1) he was totally disabled for work as a cement mason, or
- (2) he was involuntarily unemployed, or
- (3) he was employed in a supervisory capacity in the Building and Construction Industry in the 46 Northern California Counties. However, a Participant may work in a supervisory capacity outside the 46 Northern California Counties during a grace period for a period not to exceed 18 months, or
- (4) the Participant is absent from Covered Employment because of Maternity or Paternity Leave, in which case, the Participant will be credited with a maximum of 300 Hours Worked for the period of that leave.

*Maternity/Paternity Leave Defined:* A Participant is deemed to be on Maternity or Paternity Leave if the Participant is absent from work because of the pregnancy of the Participant, the birth of a child of the Participant, the placement of child with the Participant in connection with the adoption of the child by the Participant, or for the purpose of caring for the child during the period immediately following the birth or placement.

A grace period does not add to a Participant's Credited Service. It is a period which is to be disregarded in determining whether the Participant has worked sufficient hours in Covered Employment to prevent a Permanent Break in Service. In order to secure the benefits of a grace period, a Participant must give written notice to the Board of the circumstances entitling the Participant to the grace period within 30 days after the occurrence of the circumstances and must present written evidence as the Board may require. The Board in its sole discretion will determine whether the Participant is entitled to a grace period in accordance with the provisions of this Section.

g. Effect of a Permanent Break in Service

If a person who has not achieved status as a Vested Participant has a Permanent Break in Service:

- (1) his previous Years of Credited Service and Benefit Units are canceled, and
- (2) his participation is canceled. New participation is subject to the provisions of Section 2.04.

**Section 6.07. Separation From Covered Employment**

In applying the Separation from Covered Employment provisions of the Plan, periods of absences due to Qualified Military Service will not be counted in determining whether a Participant has incurred a Separation from Covered Employment.

- a. A Participant will be deemed to be Separated from Covered Employment at the end of any 2 consecutive Plan Credit Year periods in which he does not work at least 300 hours in Covered Employment in at least one of the 2 Plan Credit Years.
- b. A Participant will be deemed to have Separated from Covered Employment before February 1, 1976 if he failed to earn one quarter of Credited Future Service during a Plan Credit Year in any period of 2 consecutive Plan Credit Years.

**ARTICLE 7  
JOINT-AND-SURVIVOR PENSION**

**Section 7.01. General**

Upon retirement, the Joint-and-Survivor Pension provides a lifetime pension for a married Pensioner who meets the eligibility requirements for any type of Pension under the provisions of Article 3, 4 or 5, plus a lifetime pension for his surviving Spouse, starting after the death of the Pensioner. In the event of death before retirement, the Joint-and-Survivor Pension provides a lifetime pension to the surviving Spouse of a married Participant who is vested in accordance with Section 3.16.

- a. The monthly amount to be paid to the surviving Spouse is 50%, 75% or 100% of the monthly amount which was payable or would have been payable to the deceased Pensioner, depending on whether the Pensioner elected payment under the 50%, 75% or 100% Joint-and-Survivor Pension at retirement.

- b. The monthly amount to be paid to the surviving Spouse of a Participant who dies prior to retirement and who satisfies the requirements of Section 7.05 will be 50% of the monthly amount which would otherwise have been payable to the deceased Participant under the 50% Joint-and-Survivor Pension.
- c. When a Joint-and-Survivor Pension is in effect, the monthly amount of the Participant's pension is reduced in accordance with the provisions of the applicable Section 7.06, 7.07.a. or 7.07.b. from the full amount otherwise payable.
- d. For pensions with an Annuity Starting Date on or after September 1, 1996 and, in the event the Spouse predeceases the Pensioner, the monthly benefit payable as a Joint-and-Survivor Pension will revert, prospectively, to the full monthly amount of the Pensioner's regular monthly benefit as if the Joint-and-Survivor Pension had not been elected. The full monthly benefit is then payable for the lifetime of the Pensioner.

### **Section 7.02. Annuity Starting Date**

The provisions of this Article do not apply:

- a. to a Pensioner, whose Annuity Starting Date was before January 1, 1985; or
- b. to a Vested Participant who has not earned one Hour Worked after August 22, 1984.

### **Section 7.03. Upon Retirement**

All pensions will be paid in the form of a Joint-and-Survivor Pension, unless the Participant has filed with the Board, in writing, a timely election to waive that form of pension, subject to all of the conditions of this Section.

- a. No election will be effective unless the Spouse of the Participant consents in writing to the election; the election designates a beneficiary (or form of benefits) which may not be changed without Spousal consent (or the consent of the Spouse expressly permits designation by the Participant without any requirement of further consent by the Spouse); and acknowledges the effect of the election and consent is witnessed by an authorized Fund representative, or a Notary Public. No consent is required if it has been established to the satisfaction of a Fund representative that the consent may not be obtained because there is no Spouse or the Spouse cannot be located, or because of other circumstances as the Secretary of the Treasury may by regulation prescribe. Any consent by a Spouse (or establishment that the consent of a Spouse may not be obtained) is effective only with respect to that Spouse.
- b. The Board will provide to each Participant, no less than 30 days and nor more than 90 days before the Annuity Starting Date, a written explanation of the terms and conditions of the Joint-and-Survivor Pension and the effect of the rejection of such pension. A Participant (with any applicable spousal consent) may waive the requirement that the written explanation be provided at least 30 days before the Annuity Starting Date if the Participant's pension commences more than 7 days after the written explanation is provided.

- c. A Participant may elect to waive the 50% Joint-and-Survivor Pension with the consent of his Spouse and a Participant may revoke this election at any time. A Participant and his Spouse are entitled to exercise the right provided in this Section during a period of up to 90 days after they have received a written explanation of the terms and conditions of the Joint-and-Survivor Pension, their rights under this Section and the effect of the exercise of those rights. However, the election period will end on the 30<sup>th</sup> day after the date on which the written explanation is provided, if the written explanation is provided after the Annuity Starting Date.

#### **Section 7.04. Retirement on a Disability Pension Before Age 55**

Payment of a Joint-and-Survivor Pension to the surviving Spouse of a Pensioner on a Disability Pension will start on the later of:

- a. the first of the month following the death of the Pensioner, or
- b. the first of the month following the date the Pensioner would have attained age 55 had he lived.

#### **Section 7.05. Death of an Eligible Participant Before Retirement - Surviving Spouse Pension**

- a. If a Participant dies after achieving Vested Status and after earning one or more Hours Worked after August 22, 1984, the surviving Spouse will be entitled to a Surviving Spouse Pension.

If the Participant's death occurred after becoming eligible for a non-Disability Pension benefit under the Plan, the Spouse will be paid a Surviving Spouse Pension as if the Participant had retired on a 50% Joint-and-Survivor Pension on the day before his death. If the Participant's death occurred before becoming eligible for any non-Disability Pension benefit under the Plan, the Spouse will be paid a Surviving Spouse Pension beginning on the earliest date he would have qualified for a non-Disability Pension benefit from the Plan had he lived. The amount of the Pension will be determined as if the Participant had left Covered Employment on the date of his death (or the date he last worked in Covered Employment, if earlier), retired on a 50% Joint-and-Survivor Pension upon attaining the earliest date for which he would have qualified for a non-Disability Pension benefit from the Plan, and died on the last day of the month in which he qualified for benefits.

This Section also applies to an inactive Participant who has achieved Vested Status, had one or more Hours Worked on or after September 2, 1974 and dies after August 22, 1984.

- b. Notwithstanding any other provisions of this Article, a Surviving Spouse Pension will not be paid in the form, manner or amount described above if one of the alternatives set forth in this Subsection applies.
  - (1) If the Actuarial Present Value of the benefit is \$5,000 or less, the Board will make a single-sum payment to the Spouse in an amount equal to that Actuarial Present Value, in full discharge of the Surviving Spouse Pension.

- (2) Subject to paragraph (3) below, the Spouse may elect in writing, filed with the Board, and on whatever form it may prescribe, to defer commencement of the Surviving Spouse Pension until anytime after the death of the Participant. Payments will begin as of the surviving Spouse's Annuity Starting Date. The amount payable at that time will be determined as described in Subsection a. above, except that the benefit will be paid in accordance with the terms of the Plan in effect when the Participant last worked in Covered Employment, as if the Participant had retired with a 50% Joint-and-Survivor Pension on the day before the surviving Spouse's payments are scheduled to start, and died the next day.
  - (3) Payment of the Surviving Spouse Pension must start no later than December 1 of the calendar year in which the Participant would have reached age 70½ or, if later, December 1 of the calendar year following the year of the Participant's death. If the Board confirms the identity and whereabouts of a surviving Spouse who has not applied for benefits by that time, payments to that surviving Spouse in the form of a single life annuity (subject to the provisions of paragraph (1) of this Subsection 7.05.b.) will begin automatically as of that date.
- c. Notwithstanding any other provisions of the Plan, if the Annuity Starting Date for the Surviving Spouse Pension is after the Participant's earliest retirement date, the benefit will be determined as if the Participant had died on the Surviving Spouse's Annuity Starting Date after retiring with a Joint-and-Survivor Pension the day before, taking into account any actuarial adjustments to the Participant's accrued benefit that would have applied as of that date.
  - d. If a surviving Spouse dies before the Annuity Starting Date of the Surviving Spouse Pension, that benefit will be forfeited and there will be no payments to any other party.

#### **Section 7.06. Adjustment of Pension Amount**

- a. For a Participant who is eligible for a Regular, Early Retirement or Service Pension, the 50% Joint-and-Survivor Pension will be 95% of the amount determined from Section 3.03, 3.05, or 3.15, whichever is appropriate, if the Participant and Spouse are the same age. The factor is increased by .4 percentage points for each full year the Spouse is older than the Participant, subject to a maximum factor of 99%; or decreased by .4 percentage points for each full year the Spouse is younger than the Participant.
- b. For a Participant who is eligible for a Disability Pension, the 50% Joint-and-Survivor Pension will be 85% of the amount determined from Section 3.07, if the Participant and Spouse are the same age. The factor is increased by .4 percentage points for each full year the Spouse is older than the Participant, subject to a maximum factor of 99%; or decreased by .4 percentage points for each full year the Spouse is younger than the Participant.

The factor determined in the paragraph above will be increased by 2.5 percentage points if the Participant is age 45. The factor is reduced by .25 percentage points for each year the Participant is older than age 45; or increased by .75 percentage points for each year he is younger than age 45. This increase when added to the adjustment factor above cannot exceed 99%.

#### **Section 7.07. Optional 75% and 100% Joint-and-Survivor Pensions**



In lieu of any other form of pension otherwise payable to him, a married Participant entitled to a Regular, Early Retirement, Service or Disability Pension with an Annuity Starting Date on or after September 1, 1999 may elect to receive the payment of his pension on the basis of either a 75% or 100% Joint-and-Survivor Pension. Under either the 75% or 100% Joint-and-Survivor Pension, he will receive a lower monthly amount with the provision that 75% or 100%, as the case may be, of that lower amount is continued after his death for the lifetime of his Spouse. The amount payable to the Participant who has elected one of these payment forms is determined as follows:

a. 75% Joint-and-Survivor Pension

- (1) For a Participant who is eligible for a Regular, Early Retirement or Service Pension, the 75% Joint-and-Survivor Pension will be 91% of the amount determined from Section 3.03, 3.05, or 3.15, whichever is appropriate, if the Participant and Spouse are the same age. The factor is increased by .4 percentage points for each full year the Spouse is older than the Participant, subject to a maximum factor of 99%, or decreased by .4 percentage points for each full year the Spouse is younger than the Participant.
- (2) For a Participant who is eligible for a Disability Pension, the 75% Joint-and-Survivor Pension will be 81% of the amount determined from Section 3.07, if the Participant and Spouse are the same age. The factor is increased by .4 percentage points for each full year the Spouse is older than the Participant, subject to a maximum factor of 99%, or decreased by .4 percentage points for each full year the Spouse is younger than the Participant.

The factor determined in the paragraph above will be increased by 2.5 percentage points if the Participant is age 45. The factor is reduced by .25 percentage points for each year the Participant is older than age 45; or increased by .75 percentage points for each year he is younger than age 45. This increase when added to the adjustment factor above cannot exceed 99%.

b. 100% Joint-and-Survivor Pension

- (1) For a Participant who is eligible for a Regular, Early Retirement or Service Pension, the 100% Joint-and-Survivor Pension will be 87% of the amount determined from Section 3.03, 3.05, or 3.15, whichever is appropriate, if the Participant and Spouse are the same age. The factor is increased by .4 percentage points for each full year the Spouse is older than the Participant, subject to a maximum factor of 99%, or decreased by .4 percentage points for each full year the Spouse is younger than the Participant.
- (2) For a Participant who is eligible for a Disability Pension, the 100% Joint-and-Survivor Pension will be 77% of the amount determined from Section 3.07, if the Participant and Spouse are the same age. The factor is increased by .4 percentage points for each full year the Spouse is older than the Participant, subject to a maximum factor of 99%, or decreased by .4 percentage points for each full year the Spouse is younger than the Participant.

The factor determined in the paragraph above will be increased by 2.5 percentage points if the Participant is age 45. The factor is reduced by .25 percentage points for each year the Participant is older than age 45; or increased by .75 percentage points for each year he is younger than age 45. This increase when added to the adjustment factor above cannot exceed 99%.

#### **Section 7.08. Additional Conditions**

A Joint-and-Survivor Pension is not effective under any of the following circumstances:

- a. A Joint-and-Survivor Pension is not effective unless the surviving Spouse was married to the Participant throughout the year preceding the Participant's death.
- b. A Joint-and-Survivor Pension is not effective unless the Pensioner and Spouse were married to each other on the Annuity Starting Date of the Participant's pension, and for at least a one-year period any time before the Pensioner's death.
- c. Subject to the requirements for documentation described in Section 7.03, the Participant must file, before his Annuity Starting Date, a written representation, on which the Board or other Plan Representative is entitled to rely, concerning that Participant's marital status which, if false, gives the Board the discretionary right to adjust the dollar amount of the pension payments made to the alleged surviving Spouse so as to recoup any excess benefits which may have been erroneously paid.
- d. An effective election to waive the Joint-and-Survivor Pension or a revocation of that election must be:
  - (1) made (or revoked) prior to the Annuity Starting Date;
  - (2) made on forms furnished by the Fund Office; and
  - (3) filed with the Fund Office.
- e. A Joint-and-Survivor Pension, once payable, may not be revoked or the Pensioner's benefits increased, because of the subsequent divorce of the Spouse from the Pensioner or the Spouse predeceasing the Pensioner, except as provided in Section 7.01.d.
- f. The rights of a former Spouse or other alternate payee to any share of a Participant's pension, as set forth under a qualified domestic relations order, will take precedence over any claims of the Participant's Spouse at the time of retirement or death, to the extent provided by a domestic relations order or by any law of the United States.
- g. Notwithstanding any other provisions of the Plan, a waiver of the Joint-and-Survivor Pension is not effective if given more than 90 days before the Annuity Starting Date.

#### **Section 7.09. Spousal Consent Not Necessary**

- a. Notwithstanding any other provision of the Plan, spousal consent in accordance with Section 7.03 is not required if the Participant establishes to the satisfaction of the Trustees that:

- (1) there is no Spouse,
  - (2) the Spouse cannot be located,
  - (3) the Participant and Spouse are legally separated, or
  - (4) the Participant has been abandoned by the Spouse as confirmed by court order.
- b. If the Spouse is legally incompetent, consent under Section 7.03 may be given by his or her legal guardian, including the Participant if authorized to act as the Spouse's legal guardian.

### **Section 7.10. Notice to Participants**

Within a period of no more than 180 days and no less than 30 days before the "Annuity Starting Date" (and consistent with Treasury regulations), the Trustees shall provide the Participant and his Spouse, if any, with a written explanation of:

- a. the terms and conditions of the 50% Joint-and-Survivor Pension and the optional 75% and 100% Joint-and-Survivor Pensions;
- b. the Participant's right to make and the effect of an election to waive the 50% Joint-and-Survivor Pension;
- c. the right of the Participant's Spouse to consent to any election to waive the 50% Joint-and-Survivor Pension;
- d. the right of the Participant to revoke such election during the election period that ends on the Annuity Starting Date, and the effect of such revocation;
- e. the relative values of the various optional forms of benefit under the Plan; and
- f. the right to defer any distribution and the consequences of failing to defer distribution of benefits including a description of how much larger benefits will be if the commencement of distributions is deferred.

**ARTICLE 8  
DEATH BENEFITS**

**Section 8.01. Pensioner's Three-Year Guarantee of Benefits**

If a Pensioner (other than one receiving a Joint-and-Survivor Pension) dies prior to having received 36 monthly payments, monthly payments in the amount as may be from time to time in effect at the time each payment comes due will be continued until a total of 36 monthly payments have been made to the Pensioner and his surviving Spouse, if any, or until the death of the Spouse, whichever occurs first, and will then cease. If there is no surviving Spouse, the pension will cease upon the death of the Pensioner. If the Pensioner had elected the Level Income Option (Article 9), benefits under this Section will be payable only in the amount, if any, by which payments under that option total less than 36 times the monthly amount to which the Pensioner would have been entitled, if he had not elected the Level Income Option. The benefit, if payable, will be paid in monthly installments equal to the amount to which the Pensioner would have been entitled in the absence of that election.

**Section 8.02. Pensioner's Lump-Sum Death Benefit**

If a Pensioner dies on or after August 1, 1995, a Lump-Sum Death Benefit will be paid to his surviving Spouse in an amount equal to \$100.00 for each full Benefit Unit, plus a proportionate part of \$100.00 for any fraction of a Benefit Unit, the Pensioner had earned under the Plan at the time of retirement.

If there is no surviving Spouse at the time of the Pensioner's death, the Lump-Sum Death Benefit will be paid to one or more of the Pensioner's relatives in the following order: child(ren), parent(s), or sibling(s).

If the Pensioner is not survived by any of the preceding relatives, the Fund will reimburse the individual responsible for the Pensioner's funeral expenses to the extent that the expenses do not exceed the amount of the Lump-Sum Death Benefit. Any portion of the Lump-Sum Death Benefit remaining will be payable to the estate of the Pensioner.

If a Lump-Sum Death Benefit is not payable under any of the above circumstances, it will be payable to the estate of the Pensioner.

**Section 8.03. Survivor Benefit Limitations**

Notwithstanding any other provisions of the Plan, the survivor benefits described in this Article will comply with the limits of Internal Revenue Code Section 401(a)(9) and the incidental benefit rule prescribed under it, including proposed IRS Reg. §1.401(a)(9)-1.

**ARTICLE 9  
LEVEL INCOME OPTION**

**Section 9.01. Purpose**

A Participant entitled to a Service, Early Retirement, Pro Rata Early Retirement, Deferred Vested Service, or Deferred Vested Early Retirement Pension with at least 10 years of Northern California Credited Service, may elect the Level Income Option in lieu of the pension otherwise payable to him. Under the Level Income Option, he will receive a higher monthly amount for each month before the month in which he attains age 62 and a lower monthly amount for the remainder of his life. The purpose of this Option is to provide a Pensioner on a Service, Early Retirement, Pro Rata Early Retirement, Deferred Vested Service, or Deferred Vested Early Retirement Pension with a more or less level income for life, taking into account his likely receipt of Social Security benefits after he attains age 62.

The Level Income Option is not available to a Pensioner in receipt of a Joint-and-Survivor Pension.

**Section 9.02. Amount Payable Under the Level Income Option**

The higher monthly amount payable under this Option before attainment of age 62 will be determined by adding the following monthly amount to the monthly benefit otherwise payable (before rounding) according to the age of the Pensioner when benefit payments begin.

<b>Attained Age at Commencement of Optional Benefits</b>	<b>Amount</b>
55	\$60.00
56	\$64.10
57	\$68.70
58	\$73.70
59	\$79.20
60	\$85.40
61	\$92.30

If the first month for which the Level Income Option is payable does not coincide with the Participant's birthday, the benefit amount will be determined from the above table on a pro rata basis, taking into account the number of completed months since his last birthday.

After the Pensioner has reached age 62, the monthly benefit amount determined above will be reduced by \$100.

The Level Income Option will not be less than the Actuarial Equivalent of a straight life annuity where Actuarial Equivalence is determined using the "applicable mortality table" and "applicable interest rate" described in Section 1.01.a.

**Section 9.03. Payment**

Payment of the Level Income Option will be subject to the following conditions:

- a. The Participant must have elected the Level Income Option in writing, on a form prescribed by the Board before the first month in which a pension is paid to him.
- b. The Option may not be revoked once benefit payments have begun.
- c. If the adjustment described above would reduce the monthly amount payable after age 62 to less than \$20 a month, it will not be applied and, in that event, the benefit amount payable before age 62 will be adjusted on the basis of lifetime actuarial equivalence so that the benefit payable to the Pensioner on and after attainment of age 62 will be \$20 a month.

**ARTICLE 10**  
**APPLICATIONS, BENEFIT PAYMENTS, AND RETIREMENT**

**Section 10.01. Applications**

- a. A pension must be applied for in writing on a form and in the manner prescribed by the Board and filed with the Board in advance of its Annuity Starting Date. Except as provided in Section 10.05, a pension will be payable on the first of the month after the month in which the application is filed, if the Participant is otherwise eligible.

An application for a Disability Pension is considered timely if the Social Security Disability Benefit entitlement notice is filed with the Board no later than 12 months after the date of the notice. The payment of the Disability Pension will begin with the seventh month of disability.

- b. If a Pensioner submits evidence of entitlement to additional Benefit Units, his increased pension, if any, will become effective:
  - (1) retroactively to the effective date of his pension, if his application for additional Benefit Units was filed within one year after the first pension payment was made to him, or
  - (2) the first of the month following the date the application for additional Benefit Units was made, if it was filed more than one year after the first pension payment was made to him.
- c. If a Participant previously denied a pension submits evidence of entitlement to additional Credited Service and/or Benefit Units which subsequently qualifies him for a pension, his pension will become effective:
  - (1) retroactively to the date determined under Subsection a. above, if the evidence of additional Credited Service and/or Benefit Units was submitted within one year after he was advised of the denial of a pension, or
  - (2) on the first of the month following the submission of the evidence of additional Credited Service and/or Benefit Units, if it was filed more than one year after he was advised of the denial of a pension.
- d. An application for a Surviving Spouse Pension (Pre-retirement) must be made in writing on a form and in the manner prescribed by the Board.

## **Section 10.02. Information Required**

Each Participant, Pensioner or any other claimant to benefits must furnish to the Board any information or proof requested by it and reasonably required to administer the Pension Plan. Failure on the part of any Participant, Pensioner or claimant to comply with this request promptly, completely and in good faith will be sufficient grounds for denying, suspending or discontinuing benefits to that person. If a Participant or Pensioner or other claimant makes a false statement material to his claim for benefits, the Board can recoup, offset or recover the amount of any payments made in reliance on that false statement in excess of the amount to which the Participant or Pensioner or other claimant was rightfully entitled under the provisions of this Plan.

## **Section 10.03. Action of Board of Trustees**

The Board of Trustees is, subject to the requirements of the law, the sole judge of the standard of proof required in any case and the application and interpretation of this Plan, and any decision of the Board of Trustees is final and binding on all parties, subject only to judicial review as may be in harmony with federal labor law.

## **Section 10.04. Right of Appeal and Determination of Disputes**

a. No Participant, Pensioner, Beneficiary or other person has any right or claim to benefits under the Pension Plan, or any right or claim to payments from the Fund, other than as specified in the Plan. Any dispute as to eligibility, type, amount or duration of benefits or any right or claim to payments from the Fund will be resolved by the Board under the Pension Plan provisions, and its decision of the dispute, right or claim will be final and binding on all parties, subject only any civil action under §502(a) of ERISA, including the petitioner and any person claiming under the petitioner provided, however, that no legal action may be commenced or maintained against the Plan more than 90 days after the Board of Trustees' decision upon review. The provisions of this Section shall apply to and include any and every claim to benefits from the Fund, and any claim or right asserted under the Pension Plan or against the Fund, regardless of the basis asserted by the claim and regardless of when the act or omission upon which the claim is based occurred.

### **b. Denial of Benefits**

- (1) **Non-Disability Benefits and Disability Benefits determined under Section 3.08 (based on a Social Security Disability Benefit), Subsections 6.05.a.(2) and 6.05.a.(3).** If an application for benefits is denied in whole or in part by the Fund Office (acting for the Board of Trustees), the applicant will be notified of such denial, in writing, within a reasonable period of time but not later than 90 days after receipt of the application unless the Fund Office determines that special circumstances require an extension of time for processing the application. In such case, a written notice of the extension will be furnished to the applicant prior to the end of such 90-day period. In no event shall such extension exceed a period of 90 days from the end of such initial 90-day period. The extension notice will indicate the special circumstances requiring an extension of time and the date by which the plan expects to render a decision.

(2) **Disability Benefits determined under Section 3.08 (based on medical evidence).**

If an application for disability benefits under Section 3.08 (based on medical evidence) is denied by the Fund Office (acting for the Board of Trustees), the applicant will be notified of the denial, in writing, within a reasonable period of time but not later than 45 days after receipt of the application for such disability benefits. This 45-day period may be extended for up to an additional 30 days provided that the Fund Office determines that such an extension is necessary due to matters beyond the control of the Plan and notifies the applicant, prior to the end of the initial 45-day period, in writing, of such extension and the circumstances requiring the extension of time and the date by which the Plan expects to render a decision. If prior to the end of the first 30-day extension period, the Fund Office determines that, due to matters beyond the control of the Plan, a decision cannot be made within the extension period, the period for making the decision may be extended for up to an additional 30 days, provided that the Fund Office notifies the applicant, prior to the end of the first 30-day extension period, of the circumstances requiring the extension and the date as of which the Plan expects to make a decision. In the case of any extension under this Subsection, the notice will be in writing and will specifically explain the Plan provisions on which the entitlement to such disability benefits is based, the unresolved issues that prevent a decision, and the additional information needed to resolve those issues; and the applicant will be given at least 45 days within which to provide the specified information.

The period of time within which a benefit determination is required to be made will begin at the time an application for benefits is filed with the Fund Office without regard to whether all the information necessary to make a benefit determination accompanies the filing.

In the event that a period of time is extended, as permitted above, due to an applicant's failure to submit information necessary to make a determination, the period for making the benefit determination will be tolled from the date on which the notification of the extension is sent to the applicant until the date on which the applicant responds to the request for additional information.

**c. Notification of Denial of Benefits**

The written notification of the benefit denial will be set forth, in a manner calculated to be understood by the applicant:

- (1) The specific reason(s) for the adverse determination;
- (2) Reference to the specific Plan provision(s) on which the denial is based;
- (3) A description of any additional material or information necessary for the applicant to perfect the claim and an explanation of why such material or information is necessary;
- (4) A description of the Plan's review procedures and the time limits applicable to such procedures, including a statement of the applicant's right to bring a civil action under §502(a) of ERISA following an adverse benefit determination on review.

In addition to the above, for a claim for disability benefits under Section 3.08 (based on medical evidence), the written notification of the benefit denial will include the specific



rule, guideline, protocol or other similar criterion relied upon in making the adverse determination.

**d. Right of Appeal**

Any person whose application for benefits under this Plan has been denied in whole or in part by the Board of Trustees, or whose claim to benefits is otherwise denied by the Board of Trustees, may petition the Board of Trustees to reconsider its decision. A petition for reconsideration:

- (1) Must be in writing; and
- (2) Must state in clear and concise terms the reason(s) for disagreement with the decision of the Board of Trustees; and
- (3) May include documents, records, and other information related to the claim for benefits; and
- (4) Must be filed by the petitioner or the petitioner's duly authorized representative with or received by the Fund Office within sixty (60) days after the date the notice of denial was received by the petitioner. In the case of a claim for disability benefits under Section 3.08 (based on medical evidence), the petitioner or the petitioner's duly authorized representative must file his or her petition for reconsideration within one hundred eighty (180) days after the date the notice of denial was received by the petitioner.

Upon good cause shown, the Board of Trustees may permit the petition to be amended or supplemented. The failure to file a petition for reconsideration within such sixty (60) day period (one hundred eighty (180) day period for disability benefits under Section 3.08 (based on medical evidence)) shall constitute a waiver of the petitioner's right to reconsideration of the decision. Such failure shall not, however, preclude the petitioner from establishing his or her entitlement at a later date based on additional information and evidence that was not available to him or her at the time of the decision of the Board of Trustees.

Upon request, the petitioner or the petitioner's duly authorized representative will be provided, free of charge, reasonable access to, and copies of, all documents, records and other information relevant to the petitioner's claim for benefits. A document, record or other information shall be considered relevant to a petitioner's claim if it was relied upon in making the benefit determination; was submitted, considered or generated in the course of making the benefit determination, without regard to whether it was relied upon in making the benefit determination; demonstrates that the benefit determination was made in accordance with the Plan provisions and that such provisions have been applied consistently with respect to similarly situated claims; and, in regards to disability benefits under Section 3.08 (based on medical evidence), the Plan's policy or guidance with respect to the benefit denial (whether or not it was relied upon in making the benefit determination) and other relevant information.

The review of the determination will take into account all comments, documents, records, and other information submitted by the claimant relating to the claim without regard to whether such information was submitted or considered in the initial benefit determination.

In the case of a disability determination under Section 3.08 (based on medical evidence), the petitioner shall have access to relevant documents, records and other information relevant to the petitioner's claim, including any statement of policy or guidance with respect to the Plan concerning the denial of such disability benefits, without regard to whether such advice or statement was relied upon in making the benefit determination. The Board of Trustees will not afford any deference to the initial benefit determination. If the adverse benefit determination is based in whole or in part on a medical judgment, the Board of Trustees shall consult with a health care professional with appropriate training and experience in the field of medicine involved in the medical judgment. Such consultant shall be different from any individual consulted in connection with the initial determination and shall not be the subordinate of any such person. Relevant information also includes identification of any medical or vocational expert whose advice was obtained on behalf of the Plan in connection with the adverse benefit determination, without regard to whether the advice was relied upon in making the benefit decision.

**e. Review of Appeal**

A benefit determination on review will be made by the Trustees or by a committee designated by them no later than the date of the quarterly meeting of the Officers of the Board of Trustees that immediately follows the Plan's receipt of the request for review unless the request for review is filed within thirty (30) days preceding the date of such meeting. In such case, a benefit determination will be made no later than the date of the second meeting following the Fund Office's receipt of the request for review. If special circumstances require a further extension of time for processing, a benefit determination will be rendered no later than the third meeting following the Fund Office's receipt of the request for review and the Board of Trustees will provide the petitioner with a written notice of the extension, describing the special circumstances and the date by which the benefit determination will be made, prior to the commencement of the extension. The Board of Trustees will notify the petitioner of the benefit determination as soon as possible but not later than 5 days after the benefit determination is made.

The notification of a benefit determination upon review will be in writing and will include the reason(s) for the determination, including references to the specific Plan provisions on which the determination is based. It will also include a statement that the petitioner is entitled to receive, upon request and free of charge, reasonable access to, and copies of all documents, records and other information relevant to the claim for benefits. The notification of a benefit determination in regards to disability benefits under either Section 3.08 (based on medical evidence) will include the above, along with the specific rule, guideline, protocol or other similar criterion relied upon in making the adverse determination.

The period of time within which a benefit determination review is required to be made by the Trustees or by a committee designated by them will begin at the time the request for the benefit determination review is filed with the Fund Office without regard to whether all the information necessary to make a benefit determination review accompanies the filing.

In the event that the period for the benefit determination review is extended due to a petitioner's failure to submit information necessary to make such a determination, the period for making the benefit determination review will be suspended from the date on which the

notification of the extension is sent to the petitioner until the date on which the petitioner responds to the request for additional information.

- f. The denial of a claim to which the right to review has been waived, or the decision of the Board of Trustees or its designated committee with respect to a petition for review, is final and binding upon all parties, subject only to any civil action the applicant may bring under §502(a) of ERISA. Following issuance of a written decision of the Board of Trustees on an appeal, there is no further right of appeal to the Board of Trustees or right to arbitration.

However, a petitioner may re-establish his or her entitlement to benefits at a later date based on additional information and evidence which was not available to him or her at the time of the decision of the Board of Trustees.

### **Section 10.05. Benefit Payments Generally**

A Participant who is eligible to receive a pension benefit under this Plan and makes application in accordance with the rules of this Pension Plan is entitled upon retirement to receive the monthly pension benefits provided for the remainder of his life, subject to the provisions of this Plan. Benefit payments will begin on the first day of the month following the month in which the Participant has fulfilled all the conditions of entitlement to benefits. This first day is the Annuity Starting Date as that term is defined in Section 1.02.

Unless the Participant elects otherwise, the payment of benefits will begin no later than the 60th day after the later of the close of the Plan Year, in which:

- a. the Participant attains Normal Retirement Age, or
- b. the Participant terminates his Covered Employment and retires, as that term is defined in Section 10.11.

A Participant may, however, elect in writing filed with the Board to receive benefits payable for a later month, provided that this election does not postpone the commencement of benefits to a date later than the Required Beginning Date.

Pension payments to the Pensioner will not be made in a form other than equal monthly installments for the Pensioner's lifetime, except as provided in Section 10.09, or to effect (1) retroactive adjustments including recoupment of overpayments or (2) increases in the monthly pension amount applicable to all Pensioners in a specified class.

Pension payments will end with the payment for the month in which the death of the Pensioner occurs except as provided in accordance with the Joint-and-Survivor Pension or, if applicable, upon the completion of the guaranteed payments provided for in Section 8.01.

If a Participant or Beneficiary cannot be found after a period of 4 years from the date on which a benefit is payable to him, that benefit will be forfeited and will go to and be retained by the Fund, unless the Plan has been terminated prior to the date on which the benefit would become forfeitable in accordance with this provision. However, if a Participant or Beneficiary subsequently makes a claim for the forfeited benefit, the benefit will again be payable to the Participant or Beneficiary.

In the event there are conflicting claims to a benefit payable under the terms of the Plan, the Board may interplead the claimants by appropriate proceedings in a court of competent jurisdiction. In this event, the provisions of Section 10.04 do not apply, and the claimants must submit their respective claims to the court in which the interpleader proceedings are pending. Upon deposit with the court of the accrued benefits, the Board will be entitled to be dismissed from the interpleader proceedings and entitled to payment of its costs in connection with the proceedings, including reasonable attorney's fees. Thereafter, a final decision of the court in the proceedings will bind all claimants to the benefit and constitute a full discharge of the Board and the Fund from any liability for benefits.

#### **Section 10.06. Mandatory Commencement of Benefits**

- a. Notwithstanding any provision of the Plan to the contrary, effective April 1, 1990, the Fund will begin benefit payments to all Participants by their Required Beginning Dates, whether or not they apply for benefits.
- b. If a Participant fails to file a completed application for benefits on a timely basis, and his whereabouts are known to the Fund, the Fund will establish the Participant's Required Beginning Date as the Annuity Starting Date and begin benefit payments as follows:
  - (1) If the Actuarial Value of the Participant's benefit (determined in accordance with Section 10.09 on small benefit cashouts) is no more than \$5,000, in a single-sum payment.
  - (2) In any other case, in the form of a Joint-and-Survivor Pension calculated on the assumptions that the Participant is and has been married for at least one year by the date payments start and that the husband is 3 years older than the wife.
  - (3) The benefit payment form specified here will be irrevocable once it begins, with the sole exception that it may be changed to a single-life annuity if the Participant proves that he did not have a qualified Spouse (including an alternate payee under a QDRO) on the Required Beginning Date; also, the amount of future benefits will be adjusted based on the actual age difference between the Participant and Spouse if proven to be different from the foregoing assumptions.
  - (4) Federal, state and local income tax, and any other applicable taxes, will be withheld from the benefit payments as required by law or determined by the Board to be appropriate for the protection of the Board and the Participant.

#### **Section 10.07. Benefits Accrued After Retirement**

##### **a. Before Normal Retirement Age**

As of September 1, 1990, additional benefits earned by a Participant in Covered Employment before Normal Retirement Age will be determined as of the Participant's new Annuity Starting Date, unaffected by previously suspended pension benefits which may be resumed in accordance with Section 10.13.

##### **b. After Normal Retirement Age**

As of September 1, 1990, any additional benefits earned by a Participant in Covered Employment after Normal Retirement Age will be determined at the end of each Plan Credit Year and will be payable as of February 1 following the end of the Plan Credit Year in which it accrued, provided payments are not suspended pursuant to Section 10.12. or postponed due to the Participant's continued employment.

Additional benefits that are not suspended or postponed will be paid in the payment form in effect for the Participant as of the Annuity Starting Date most recently preceding the date the additional benefits became payable, if the Annuity Starting Date had been established after Normal Retirement Age; otherwise the additional benefits will be determined as of the Participant's new Annuity Starting Date.

#### **Section 10.08. Actuarial Adjustment for Delayed Retirement**

- a. As of April 1, 1989, if a Participant's initial Annuity Starting Date is after the Participant's Normal Retirement Age, the monthly benefit will be the accrued benefit at Normal Retirement Age, actuarially increased for each complete calendar month for which benefits were not suspended beginning at Normal Retirement Age and ending on the earlier of the last day of the month immediately preceding the Annuity Starting Date, or March 31 of the calendar year following the year in which the Participant attained age 70½, and then converted as of the Annuity Starting Date to the benefit payment form elected in the pension application of the Participant, or to the automatic form of Joint-and-Survivor Pension if the Participant is married.
- b. If a Participant becomes entitled to additional benefits after Normal Retirement Age, whether through additional service or because of a benefit increase, the actuarial increase in those benefits will start from the date he would first have been paid rather than Normal Retirement Age.
- c. The actuarial increase will be 1.00% per month for each month after Normal Retirement Age (or a later date as may be determined in b. above) until age 70 and 1.50% per month thereafter until the Participant's Required Beginning Date.
- d. Notwithstanding the above, instead of an actuarially increased benefit, a Participant may choose to receive at his Annuity Starting Date:
  - (1) a monthly benefit equal to his accrued benefit at Normal Retirement Age, adjusted to include any additional benefits to which he becomes entitled after his Normal Retirement Age and before his Annuity Starting Date as described in b, above, plus
  - (2) a one-time cash payment equal to the total of the amounts payable for the month between his Normal Retirement Age and his Annuity Starting Date for which benefits are not suspended.

#### **Section 10.09. Lump-Sum Payment in Lieu of Monthly Benefit**

If, at the time a monthly benefit becomes payable to a Participant or surviving Spouse, the Actuarial Equivalence of the monthly benefit is \$5,000 or less, the Board will pay to the Participant or surviving Spouse in a lump sum the amount of the Actuarial Equivalence, in lieu of the monthly benefit otherwise payable.

For purposes of this Section, Actuarial Equivalence will be determined in accordance with Section 1.01, except that the following procedure will apply to benefits payable to a Participant if it results in a larger lump-sum amount:

- a. For a Participant who is eligible for a Regular, Early, Service or Deferred Vested Pension, the lump sum amount will be \$118.00 for each \$1.00 of pension if the Participant is age 60. The factor is increased by \$.18 for each month the Participant is younger than age 60; or decreased by \$.23 for each month the Participant is older than age 60.
- b. For a Participant who is eligible for a Disability Pension, the lump sum amount will be \$99.00 for each \$1.00 of pension if the Participant is age 45. The factor is increased by \$.04 for each month the Participant is younger than age 45; or decreased by \$.12 for each month the Participant is older than age 45.

In no event will the amount determined under this Section be less than the value that would be determined using the legally required assumptions regarding life expectancy and interest rate as reflected in the Retirement Protection Act of 1994, Pub. L. 103-465 and Treas. Reg. 1.417(d)-1T.

#### **Section 10.10. Rounding of Benefit Amount**

If the amount of any monthly benefit payable under the Plan is not a multiple of \$.50, the amount will be rounded up to the next multiple of \$.50.

#### **Section 10.11. Retirement**

##### **a. Before Normal Retirement Age**

To be deemed retired before he has attained Normal Retirement Age, a Pensioner must withdraw completely and refrain from engaging in employment prohibited by the Plan. Prohibited employment includes (1) any employment covered by the Collective Bargaining Agreement with the Union or an affiliated local union; or (2) any employment for the Northern California Cement Masons Joint Apprenticeship and Training Committee, the District Council or one of its affiliated local unions; or (3) any employment or self-employment for wages or profit in the Building and Construction Industry in the geographical jurisdiction of this Plan or a Related Plan with which the Fund has a reciprocal agreement.

##### **b. After Normal Retirement Age and Prior to the Required Beginning Date**

To be deemed retired after he has attained Normal Retirement Age and prior to his Required Beginning Date, a Pensioner must refrain from engaging in employment prohibited by the Plan. Prohibited employment includes employment or self-employment for wages or profit of 40 hours or more during a calendar month:

- (1) in an industry in which Employees were employed and accrued benefits under the Plan as a result of that employment at the time that the payment of benefits to the Pensioner commenced or would have commenced if the Pensioner had not remained in or returned to employment; and

- (2) in a trade or craft in which the Pensioner was employed at any time under the Plan; and
- (3) in the state of California.

**c. After the Required Beginning Date**

A Pensioner will be deemed retired upon reaching his Required Beginning Date, regardless of the type of employment performed.

**Section 10.12. Suspension of Pension Payments**

**a. Before Normal Retirement Age**

If a Pensioner is employed in work of the type described in Section 10.11.a., his pension payments will be suspended and permanently withheld for a period equal to the number of months during which he was employed or self-employed.

Pension payments will also be suspended and permanently withheld for an additional 3 months, except with respect to a person receiving a Disability Pension.

**b. After Normal Retirement Age and Prior to the Required Beginning Date**

If a Pensioner is employed or self-employed in work of the type described in Subsection 10.11.b., his pension payments will be suspended and permanently withheld for each calendar month in which he was employed or self-employed. After he ceases that employment, his pension will resume with the first month following the cessation of employment or self-employment of the type described in Subsection 10.11.b.

**c. After the Required Beginning Date**

Pension payments cannot be suspended for employment after the Required Beginning Date.

**d. Notices**

- (1) Before commencement of pension benefits, a Pensioner must sign a retirement declaration, in a form prescribed by the Board of Trustees, acknowledging notice of the Plan rules governing suspension of benefits, as set forth in the declaration, and agreeing to abide by the requirements of those rules. The Pensioner will be notified by mail at his last address on record with the Fund of any material change in the suspension rules on or before the effective date of the change or within 15 days.
- (2) A Pensioner must notify the Plan in writing within 15 days after starting any work of a type that is or may be prohibited under the provisions of Section 10.11 and without regard to the number of hours of work.

The Board may at any time or from time to time as a condition to receiving future benefit payments require that a Pensioner submit evidence verifying that he is unemployed or that any employment does not constitute work of the type prohibited under the provisions of Section 10.11. The Board will advise all Pensioners in writing

at least once every 12 months of its employment verification requirements and the nature and effect of the presumptions provided in paragraph d.(3).

- (3) Whenever the Board becomes aware that a Pensioner is working or has worked in prohibited employment in any month after Normal Retirement Age, and has failed to give timely notice to the Plan of that employment, the Board may, unless it is unreasonable under the circumstances to do so, act on the basis of a rebuttable presumption that the Pensioner worked for at least 40 hours in a month and any subsequent month before the Pensioner gives notice in writing to the Board that he has ceased prohibited employment. The Pensioner may overcome this presumption by establishing that his work was not, in fact, an appropriate basis under the Plan for suspension of his benefits.

In addition, whenever the Board becomes aware that a Pensioner is working or has worked in prohibited employment for any number of hours for an employer at a construction site and he has failed to give timely notice to the Plan of that employment, the Board may, unless it is unreasonable under the circumstances to do so, act on the basis of a rebuttable presumption that the Pensioner engaged in that employment for the same employer in work at that site for as long as that same employer performed that work at that construction site. The Pensioner may overcome the presumption by establishing that his work was not, in fact, an appropriate basis under the Plan for suspension of his benefits.

- (4) A Pensioner whose pension has been suspended must notify the Plan in writing when prohibited employment has ended. The Board will have the right to withhold benefit payments until that notice is filed with the Plan.
- (5) A Participant may request, in writing, a determination by the Board whether specific contemplated employment is prohibited by Section 10.11.b. The Board will make its determination and notify the Participant, in writing, of that determination in accordance with the claims review procedure provided in Section 10.04.
- (6) The Plan will inform a Pensioner of any suspension of his benefits pursuant to Section 10.11.b. by notice given by personal delivery or first class mail during the first calendar month in which his benefits are withheld. This notice will include (a) a description of the specific reasons for the suspension, (b) a general description of the Plan provisions relating to the suspension of benefits, (c) a copy of the provisions and a copy of the claims review procedure provided in Section 10.04, (d) a statement that applicable Department of Labor regulations may be found in Section 2530.203-3 of Title 29 of the Code of Federal Regulations, (e) a statement that a request for the review of the suspension will be considered in accordance with the claims review procedure provided in Section 10.04, (f) a description of the procedure for filing a benefit resumption notice, (g) the forms that must be filed for that purpose and, (h) a specific identification of the periods of employment for which suspendible amounts will be offset, the suspendible amounts subject to offset and the manner in which the offset will be made.
- (7) A Participant who continues employment beyond Normal Retirement Age in the type of work prohibited by Section 10.11.b., will be notified in writing during the first calendar month after his attainment of Normal Retirement Age that his pension



benefits will not commence until he has retired and filed an application for benefits. The Participant will also be furnished with the Plan rules governing suspension of benefits. He will also be informed that since he has delayed his Annuity Starting Date beyond Normal Retirement Age, he will forfeit benefits to which he may have been entitled had he not continued working.

**e. Review**

A suspension of benefits pursuant to this Section will be subject to review by the Board in accordance with the claims review procedure provided in Section 10.04.

**f. Resumption of Benefit Payments**

- (1) Entitlement to benefits will be resumed for months after the last month for which benefits were suspended, provided the Pensioner has complied with the notification requirements of paragraph d.(4) above. Subject to the provisions of paragraph (2) of this Subsection, overpayments attributable to payments of benefits made for any month or months for which the Pensioner engaged in prohibited employment will be deducted from benefits otherwise payable subsequent to the period of suspension.
- (2) In the case of a Pensioner who has attained Normal Retirement Age, benefit payments will resume no later than the third month after the last calendar month for which the Pensioner's benefit was suspended. The deduction or offset for prior benefit overpayments will be 100% of the initial payment or the full suspendable amount subject to offset, whichever is less. Thereafter, the deduction or offset will not exceed in any one month 25% of that month's total benefit payment which would have been due but for the offset.
- (3) If a Pensioner dies before recoupment of the overpayment, deductions will be made from any benefits payable to his surviving Spouse or Beneficiary, subject to the 25% limitation.

**g. Continued Employment After Normal Retirement Age**

Section 10.12.b., which provides for suspension of benefits after Normal Retirement Age, will not apply to a Participant who remains in Covered Employment and does not retire until after Normal Retirement Age, unless he subsequently returns to prohibited employment after he retires.

**Section 10.13. Pensioner Work Addendum**

Notwithstanding the provisions of Sections 10.11 and 10.12 above, a Pensioner may return to work without suspension of pension benefits if the Pensioner complies with any and all terms, conditions and provisions of any Retiree Work Addendum existing under an applicable collective bargaining agreement.

## ***RETIREE RETURN TO WORK ADDENDUM***

In accordance with this Section 10.13 of the Plan, a Pensioner may perform certain types of work under specific conditions without having his monthly pension benefit from the Cement Masons Pension Trust Fund for Northern California suspended. The following list of positions includes, but is not limited to, those which the Pension Plan “exempts” from the suspension of benefits provisions.

- Owner or partial owner of a company provided the employer is signatory to a District Council of Plasterers and Cement Masons of Northern California collective bargaining agreement.
- Equipment or Personnel Dispatcher for a Contributing Employer.
- Human Resources or Personnel Manager for a Contributing Employer.
- Instructor for a Contributing Employer on skills not trained for at one of the District Council of Plasterers and Cement Masons of Northern California training facilities.
- Supervisor or Superintendent in the construction industry paid on a bona fide salary basis by a Contributing Employer.
- Estimator for a Contributing Employer.
- Office worker for a Contributing Employer.
- Project Manager for a Contributing Employer.
- Safety Officer for a Contributing Employer.
- Inspector for a Contributing Employer.

The above types of work will be permitted as long as the retiree does not perform work of the kind covered by a District Council of Plasterers and Cement Masons of Northern California collective bargaining agreement in the state where he is working, even while working in one of the above capacities.

This list is subject to revision at the discretion of the Board of Trustees. Regardless of the job classification or title of the Pensioner, the Board of Trustees has the discretion to determine on the basis of the individual facts and circumstances whether work contemplated or undertaken by a Pensioner is covered under this Work Addendum.

### **Section 10.14. Benefit Payments Following Suspension**

- a. The monthly amount and type of pension resumed after suspension will be in the same form and amount received prior to suspension.
- b. Suspension of pension payments before Normal Retirement Age, in accordance with Subsection 10.12.a., because of employment of the type for which a pension would not be suspended after Normal Retirement Age, will not reduce the value of the Pensioner’s pension

below the actuarial equivalent of the pension payable at his Normal Retirement Age. To the extent necessary to avoid a reduction, the monthly amount of the pension will be adjusted so as not to deprive the Pensioner of the value of the pension payable to him at his Normal Retirement Age.

- c. A Joint-and-Survivor Pension in effect immediately prior to suspension of benefits and any optional form of payment selected, will remain in effect if the Pensioner's death occurs while his benefits are in suspension. If a Pensioner returns to Covered Employment, he will not be entitled to a new election as to the Husband-and-Wife Option, or any other optional form of benefit provided under the Plan.

### **Section 10.15. Non-forfeatability**

- a. The Employee Retirement Income Security Act requires that certain of the benefits under this Plan be non-forfeitable.
- b. A Participant acquires a non-forfeitable right to a Regular Pension at Normal Retirement Age. Periods of service and breaks in service are defined for that purpose under this Plan on the basis of all compensated hours of work. A Participant's right to his Regular Pension is non-forfeitable upon his attainment of Normal Retirement Age.
- c. ERISA also provides certain limitations on any plan amendment that may change the Plan's vesting schedule. In accordance with those legal limitations, no amendment of this Plan may take away a Participant's non-forfeitable right to a Regular Pension at Normal Retirement Age, if he has already earned it at the time of the amendment. Also, an amendment may not change the schedule on the basis of which a Participant acquires this right, unless each Participant who has a least 3 Years of Service at the time the amendment is adopted or effective (whichever is later) is given the option of achieving a non-forfeitable right on the basis of the pre-amendment schedule.

That option may be exercised within 60 days after the latest of the following dates:

- (1) when the amendment was adopted,
- (2) when the amendment became effective, or
- (3) when the Participant was given written notice of the amendment.

While the Plan provides Deferred Vested, Early Retirement, Service, Disability and Pro Rata Pensions on the basis of requirements that may be met by some Participants who have not completed 10 Years of Service, these eligibility rules represent provisions of the Plan above and beyond those which are required by law to be non-forfeitable.

The provisions of this Section are subject to the provisions of Sections 3.12, 10.01, 10.02, 10.05, 10.10, 10.12 and 10.13.

### **Section 10.16. Incompetence or Incapacity or Minority of Payee**

In the event that it is determined to the satisfaction of the Board that a Pensioner or Beneficiary is unable to care for his affairs because of mental or physical incapacity, or that a Beneficiary is a minor, and that no guardian, committee or representative of the payee has been legally

appointed, the Board may in its sole discretion, during the lifetime or minority of the payee, as the case may be, pay any amount otherwise payable to the payee, to the person or persons, or institution or facility, who or which in its opinion has been or will be caring for or supporting the payee (except that no payment will be made to a governmental institution or facility if the payee is not legally required to pay for his or her care and maintenance), until claim is made for any amounts not expended, by a legally appointed guardian, committee or other representative of the payee or by the payee after the payee has reached majority. Any payment in accordance with this Section will discharge the obligation of the Fund to the extent of that payment.

#### **Section 10.17. Benefits Unpaid on a Pensioner's or Beneficiary's Death**

The Fund may pay any benefits due and payable but not actually paid prior to the death of a Pensioner or Beneficiary to any person or institution determined by the Fund to be equitably entitled to payment. The remainder of the amount will be paid to one or more of the surviving relatives of the Pensioner or Beneficiary in the following order: lawful Spouse, child or children, parent(s), sibling(s), or to the estate of the Pensioner or Beneficiary. Any payment in accordance with this provision will discharge the obligation of the Fund to the extent of that payment.

#### **Section 10.18. Non-Assignment of Benefits**

Except to the extent otherwise provided by a qualified domestic relations order, or equivalent, authorized by ERISA, the Internal Revenue Code or the Retirement Equity Act, each Participant, Pensioner or Beneficiary under the Plan is restrained from selling, transferring, anticipating, assigning, alienating, hypothecating or otherwise disposing of his pension, prospective pension or any other right or interest under the Plan. The Board of Trustees will not recognize, or be required to recognize, any sale, transfer, anticipation, assignment, alienation, hypothecation or other disposition. Any pension, prospective pension, right or interest is not subject in any manner to voluntary transfer or transfer by operation of law or otherwise, and is exempt from the claims of creditors or other claimants and from all orders, decrees, garnishments, executions or other legal or equitable process or proceeding to the fullest extent permissible by the laws of the United States or any regulations.

The Board will adopt and prescribe reasonable rules and regulations for the implementation of the Qualified Domestic Relations Order provisions of ERISA, the Internal Revenue Code and the Retirement Equity Act. In no event will any order provide for or result in the payment of benefits which have an actuarial value in excess of the actuarial value of the benefits to which the Participant would be entitled in the absence of a domestic relations order.

#### **Section 10.19. Offset and Recoupment**

In the event that it is determined that due to either a mistake of fact or law, or to comply with Section 10.17, or to any other circumstances, a Pensioner has been paid more than he is entitled to under the terms of the Plan or under the law, the Board will offset, recoup and recover the amount of the overpayment from payments due or thereafter becoming due to the Pensioner or his Beneficiary or surviving Spouse in installments and to the extent as the Board will determine.

## **Section 10.20. Deductions from Benefit Payments**

- a. To the extent authorized by the Participant or required by the Internal Revenue Service or state taxing authority, federal and state income taxes will be withheld from a Participant's benefit payments.
- b. The Board of Trustees may establish a procedure whereby any Retired Employee, and any surviving Spouse while entitled to receive a pension, will have a portion of the pension due him deducted from his benefit payments and paid to Cement Masons Health and Welfare Trust Fund for Northern California to defray all or part of the cost of benefits to be provided to him by that Fund.

## **ARTICLE 11. LIMITATIONS ON BENEFITS UNDER SECTION 415.**

In addition to any other limitations set forth in the Plan and notwithstanding any other provisions of the Plan, effective for Limitation Years beginning on and after January 1, 2008, benefits under the Plan shall be limited in accordance with section 415 of the Code and the Treasury Regulations thereunder, in accordance with this Article. This Article 11 is intended to incorporate the requirements of section 415 of the Code by reference except as otherwise specified herein.

**Section 11.01. Definitions.** For purposes of this Article 11, the following terms shall have the following meanings.

- a. Compensation. "Compensation" for purposes of this Article 11 regarding "Highly Compensated Employee" and Article 13 regarding "Contingent Top Heavy Rules" means remuneration received from the Employer during the calendar year, as defined in Treasury Regulation § 1.415(c)-2(d)(4).

(1) "Compensation" shall also be subject to the following rules:

(a) 415 Compensation must be paid within the calendar year, and paid or treated as paid before Severance from Employment in accordance with the general timing rule of § 1.415(c)-2(e)(1) and in accordance with §1.415(c)-2(e)(2) regarding certain minor timing differences].

(b) 415 Compensation must include amounts paid by the later of 2½ months after Severance from Employment or the end of the Limitation Year that includes the Severance from Employment date in accordance with §1.415(c)-2(e)(3)(i). Such post-severance compensation includes regular pay as defined in §1.415(c)-2(e)(3)(ii), leave cashouts and deferred compensation as defined in §1.415(c)-2(e)(3)(iii), salary continuation payments for military service and disabled participants in accordance with §1.415(c)-2(e)(4), deemed section 125 compensation as defined in §1.415(c)-2(g)(6), but not other post-severance payments as defined in §1.415(c)-2(e)(3)(iv).

(2) The annual compensation of each Participant taken into account in determining benefit accruals in any Plan Year beginning after December 31, 2001 shall not exceed \$200,000. For this purpose, annual compensation means compensation during the Plan Year or such other consecutive 12-month period over which

compensation is determined under the Plan (the “determination period”). To the extent that the provisions of Section 10.20 are inconsistent with the provisions of this Section, the provisions of this Section shall govern.

The \$200,000 limit on annual compensation in subsection (a) above shall be adjusted for cost-of-living increases in accordance with IRC §401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

In determining benefit accruals in Plan Years beginning after December 31, 2001, the annual compensation limit in subsection (a) above, for determination periods beginning before January 1, 2002, shall be \$200,000.

(3) Effective for Plan Years beginning after December 31, 2008, Compensation shall include military differential wage payments as defined in section 3401(h) of the Code).

- b. Limitation Year. “Limitation Year” means the calendar year.
- c. Plan Benefit. “Plan Benefit” means, as of any date, the amount of a Participant’s benefit as determined under the applicable provisions of the Plan before the application of the limits in Article 11.
- d. Severance From Employment. “Severance From Employment” has occurred when a Participant is no longer an employee of any Employer maintaining the Plan.

#### **Section 11.02. Limit on Accrued Benefits.**

For Limitation Years beginning on or after January 1, 2008, in no event shall a Participant’s benefit accrued under the Plan for a Limitation Year exceed the annual dollar limit determined in accordance with section 415 of the Code and the Treasury Regulations thereunder (the “annual dollar limit”) for that Limitation Year. If a Participant’s Plan Benefit for a Limitation Year beginning on or after January 1, 2008 would exceed the annual dollar limit for that Limitation Year, the accrued benefit, but not the Plan Benefit, shall be frozen or reduced so that the accrued benefit does not exceed the annual dollar limit for that Limitation Year.

#### **Section 11.03. Limits on Benefits Distributed or Paid.**

For Limitation Years beginning on or after January 1, 2008, in no event shall the annual amount of benefit distributed or otherwise payable to or with respect to a Participant under the Plan in a Limitation Year exceed the annual dollar limit for that Limitation Year. If the benefit distributable or otherwise payable in a Limitation Year would exceed the annual dollar limit for that Limitation Year, the benefit shall be reduced so that the benefit distributed or otherwise payable does not exceed the annual dollar limit for that Limitation Year.

#### **Section 11.04. Protection of Prior Benefits.**

- a. To the extent permitted by law, the application of the provisions of this Article 11 shall not cause the benefit that is accrued, distributed or otherwise payable for any Participant, including the Participant’s annual benefit accrued under the Plan as separately determined for each Individual Employer, to be less than the Participant’s accrued benefit as of December 31, 2007 under the provisions of the Plan that were both adopted and in effect

before April 5, 2007 and that satisfied the limitations under section 415 of the Code and the Treasury Regulations thereunder as in effect as of December 31, 2007.

- b. For any year before 1983, the limitations prescribed by section 415 of the Code as in effect before enactment of the Tax Equity and Fiscal Responsibility Act of 1982 shall apply, and no benefit earned under this Plan shall be reduced on account of the provisions of this Section if it would have satisfied those limitations under the prior law.
- c. For any year before 1992, the limitations prescribed by section 415 of the Code as in effect before enactment of the Tax Reform Act of 1986 shall apply, and no benefit earned under this Plan as of the close of the last Limitation Year beginning before January 1, 1987 shall be reduced on account of the provisions of this Section if it would have satisfied those limitations under the prior law.

#### **Section 11.05. Section 415 Cost of Living Adjustments.**

To the extent permitted by law, benefits accrued, distributed or otherwise payable with respect to any Participant while in Covered Employment, and after such Participant's Severance From Employment or the Participant's Annuity Starting Date, if earlier, that are limited by this Article 11 shall be increased annually pursuant to cost of living increases in the annual dollar limit under section 415(d)(1)(A) of the Code and the Treasury Regulations thereunder; provided, however, that in no event shall any increase under this Section 11.05 cause the amount of a Participant's accrued, distributed or otherwise payable benefit to exceed the amount of the Participant's Plan Benefit.

#### **Section 11.06. Order in Which Limits Are Applied.**

Joint and survivor annuities. To the extent permitted by law, a Participant's qualified joint and survivor annuity form of payment and the survivor annuity portion of such form of payment are computed by applying a reduction factor or factors to a Participant's Plan Benefit before the limits under this Article 11 are applied; provided however that the survivor annuity may not exceed the benefit that would have been payable to the Participant after application of the limits

#### **Section 11.07. Aggregation of Plans.**

- a. In the event that the aggregate benefit accrued in any Plan Year by a Participant exceeds the limits under section 415 of the Code and the Treasury Regulations thereunder as a result of the mandatory aggregation of the benefits under this Plan with the benefits under another plan maintained by the Employer, the benefits of such other plan shall be reduced to the extent necessary to comply with section 415 of the Code and the Treasury Regulations thereunder. If necessary to observe these limits, benefits under any other defined benefit plans will be reduced before benefits under this plan, but benefits under this plan will be reduced to the extent necessary if benefit under the other plans cannot be reduced.
- b. For purposes of applying the limits of this Section 11.07, if a Participant also participates in another tax-qualified defined benefit plan of the Employer that is not a multiemployer plan, only the benefits under this Plan that are provided by the Employer are aggregated with the benefits under the other plan.

### **Section 11.08. General.**

- a. To the extent that a Participant's benefit is subject to provisions of section 415 of the Code and the Treasury Regulations thereunder that have not been set forth in the Plan, such provisions are hereby incorporated by reference into this plan and for all purposes shall be deemed a part of the Plan.
- b. This Article 11 is intended to satisfy the requirements imposed by section 415 of the Code and the Treasury Regulations thereunder and shall be construed in a manner that will effectuate this intent. This Article 11 shall not be construed in a manner that would impose limitations that are more stringent than those required by section 415 of the Code and the Treasury Regulations thereunder.
- c. If and to the extent that the rules set forth in this Article 11 are no longer required for qualification of the Plan under section 401(a) and related provisions of the Code and the Treasury Regulations thereunder, they shall cease to apply without the necessity of an amendment to the Plan.

### **Section 11.09. Interpretation or Definition of Other Terms**

The terms used in this Article 11 that are not otherwise expressly defined for this Article, shall be defined as provided in the Plan, or if not defined in the Plan, shall be defined interpreted and applied for purposes of this Article 11 as prescribed in section 415 of the Code and the Treasury Regulations thereunder.

## **ARTICLE 12 MISCELLANEOUS**

### **Section 12.01. Gender**

Wherever any words are used in this Pension Plan in the masculine gender, they should be construed as though they were also used in the feminine gender in all situations where they would so apply. Wherever any words are used in this Pension Plan in the singular form, they should be construed as though they were also in the plural form in all situations where they would so apply, and vice versa.

### **Section 12.02. Mailings**

Except as otherwise specifically provided in this Plan, any notice or other communication to be given under the provisions of the Plan may be given by mailing the notice or communication by first class mail to the person to be notified at his last address on the records of the Plan and will be effective for all purposes on the third day after mailing.

### **Section 12.03. Addition of New Groups of Employees**

The Board will review the relevant actuarial data with respect to any group of employees added to the coverage of this Pension Fund. If the Board concludes that modification of previously adopted funding assumptions or changes in amounts of pension benefits would result from the



inclusion of the group, the appropriate provisions of the Pension Plan will be modified with respect to the group involved so that the Fund will not be adversely affected by the inclusion of the group.

#### **Section 12.04. Right to Terminate**

The Trustees will have the right to discontinue or terminate this Plan in whole or in part. In the event of a termination of this Plan, the rights of all affected Participants to benefits then accrued, to the extent then funded, will thereupon become 100% vested and nonforfeitable. Upon a termination of the Plan, the Trustees will take such steps, as they deem necessary or desirable to comply with §§4041A and 4281 of ERISA.

#### **Section 12.05. Mergers**

In the case of any merger or consolidation of the Plan with or transfer of, in whole or in part, the assets and liabilities of the Pension Fund to any other Pension Fund after September 2, 1974, each Participant will (if the Plan then terminated) receive a benefit immediately after the merger, consolidation or transfer which is at least equal to the benefit he would be entitled to receive immediately before a merger, consolidation or transfer.

#### **Section 12.06. Special Provision for Eligible Rollover Distributions**

This Section applies to distributions made from the Fund on or after January 1, 2001. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at any time and in the manner prescribed by the Plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover (all terms as defined below).

- a. **Eligible Rollover Distribution.** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:
  - (1) any distribution that is one of a series of substantially equal periodic payments (not less frequent than annually) made for the life (or life expectancy) of the distributee, or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of 10 years or more;
  - (2) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code;
  - (3) one-time retiree benefit increases payable as extra monthly annuity benefits; or
  - (4) the portion of any distribution that is not includible in gross income.
- b. **Eligible Retirement Plan.** An eligible retirement plan is:
  - (1) an individual retirement account described in Section 408(a) of the Code;
  - (2) an individual retirement annuity described in Section 408(b) of the Code;

- (3) a qualified trust described in Section 401(a) of the Code that accepts the distributee's eligible rollover distribution;
- (4) an annuity plan described in Section 403(a) of the Code;
- (5) an annuity contract described in Section 403(b) of the Code; and
- (6) an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan.

Effective for distributions made after December 31, 2007, an Eligible Retirement Plan shall also include a Roth IRA described in Code section 408A, subject to the restrictions that currently apply to rollovers from a traditional IRA into a Roth IRA.

- c. **Distributee.** A Distributee includes any Participant or former Participant. In addition, the surviving spouse of a Participant or former Participant and a former spouse of a Participant or former Participant who is the alternate payee under a Qualified Domestic Relations Order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

Effective for distributions after December 31, 2008, a Distributee also includes the Participant's nonspouse designated beneficiary. In the case of a nonspouse beneficiary, the direct rollover may be made only to an individual retirement account or annuity described in Code § 408(a) or § 408(b) ("IRA") or a Roth individual retirement account or annuity ("Roth IRA") that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code § 402(c)(11).

- d. **Direct Rollover.** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributees.

### **Section 12.07. Non-Reversion**

The Contributions and all funds of the Plan are to be administered, maintained and invested for the sole and exclusive benefit of the Participants and their Beneficiaries. Other than the payment of any reasonable and lawful expenses of the Plan and any lawful refund of money to an Employer made by mistake in fact or law and within the time limits prescribed by law, there will be no reversion of any of the assets of this Plan to any Contributing Employer.

### **Section 12.08. Laws Applicable**

This Plan is intended to comply with the Employee Retirement Income Security Act of 1974 and with the requirements for tax qualification under the Code and all regulations thereunder, and is to be interpreted and applied consistent with that intent.

## **ARTICLE 13 AMENDMENT**

### **Section 13.01. Amendment**

This Plan may be amended at any time by the Board consistent with the provisions of the Trust Agreement. However, no amendment may decrease the accrued benefit of any Participant except:

- a. As necessary to establish or maintain the qualifications of the Plan or the Trust Fund under the Internal Revenue Code and to maintain compliance of the Plan with the requirements of ERISA, or,
- b. If the amendment meets the requirements of Section 302(c)(8) of ERISA and Section 412(c)(8) of the Internal Revenue Code, and the Secretary of Labor has been notified of the amendment and has either approved of it, or within 90 days after the date on which the notice was filed, he failed to disapprove.

## **ARTICLE 14. MINIMUM DISTRIBUTION REQUIREMENTS.**

### **Section 14.01. General Rules.**

- a. Effective Date. The provisions of this Article will apply for purposes of determining required minimum distributions for calendar years beginning after December 31, 2005. For purposes of determining minimum required distributions for calendar years 2003, 2004, and 2005, a good faith interpretation of the of the requirements of Section 401(a)(9) of the Code shall apply.
- b. Precedence.
  - (1) The requirements of this Article will take precedence over any inconsistent provisions of the Plan.
  - (2) This Article does not authorize any distribution options not otherwise provided under the Plan.
- c. Requirements of Treasury Regulations Incorporated. All distributions required under this Article will be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Internal Revenue Code.
- d. TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Article, other than Section 14.01(c), distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to section 242(b)(2) of TEFRA.

## **Section 14.02. Time and Manner of Distribution.**

- a. Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.
- b. Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
  - (1) If the Participant's surviving spouse is the Participant's sole designated beneficiary, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.
  - (2) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
  - (3) If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (4) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 14.02 b., other than Section 14.02 b.(1), will apply as if the surviving spouse were the Participant.

For purposes of this Section 14.02 and Section 14.05, distributions are considered to begin on the Participant's Required Beginning Date (or, if Section 14.04 b.(4) applies, the date distributions are required to begin to the surviving spouse under Section 14.02 b.(1)). If annuity payments irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 14.02 b.(1)), the date distributions are considered to begin is the date distributions actually commence.

- c. Form of Distribution. Unless the Participant's interest is distributed in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with Sections 14.03, 14.04 and 14.05 of this Article.

### **Section 14.03. Determination of Amount to be Distributed Each Year.**

- a. General Annuity Requirements. If the Participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:
- (1) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;
  - (2) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Section 14.04 or 14.05;
  - (3) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
  - (4) payments will either be non-increasing or increase only as follows:
    - (A) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
    - (B) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in Section 14.04 dies or is no longer the Participant's beneficiary pursuant to a qualified domestic relations order within the meaning of section 414(p);
    - (C) to provide cash refunds of employee contributions upon the Participant's death; or
    - (D) to pay increased benefits that result from a Plan amendment.
- b. Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the Participant's required beginning date (or, if the Participant dies before distributions begin, the date distributions are required to begin under Section 14.02(b)(1) or (2)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's required beginning date.
- c. Additional Accruals after First Distribution Calendar Year. Any additional benefits accruing to the Participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

#### **Section 14.04. Requirements for Annuity Distributions that Commence During Participant's Lifetime.**

- a. Joint Life Annuities Where the Beneficiary is not the Participant's Spouse. If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary, annuity payments to be made on or after the Participant's required beginning date to the designated beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set forth in Q&A-2 of section 1.401(a)(9)-6 of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.
- b. Period Certain Annuities. Unless the Participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the annuity starting date. If the Participant's spouse is the Participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this Section 14.04(b), or the joint life and last survivor expectancy of the Participant and the Participant's spouse as determined under the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

#### **Section 14.05. Requirements for Minimum Distributions Where Participant Dies Before Date Distributions Begin.**

- a. Participant Survived by Designated Beneficiary. If the Participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in Section 14.02 b.(1) or (2), over the life of the designated beneficiary or over a period certain not exceeding:
  - (1) unless the Annuity Starting Date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or

- (2) if the Annuity Starting Date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.
- b. No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- c. Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this Section 14.05 will apply as if the surviving spouse were the Participant, except that the time by which distributions must begin will be determined without regard to Section 14.02(b)(1).

#### **Section 14.06. Definitions.**

- a. Designated beneficiary. The individual who is designated as the beneficiary under Section 8.03 of the Plan and is the designated beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401(a)(9)-4 of the Treasury regulations.
- b. Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Section 14.02(b).
- c. Life expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.
- d. Required Beginning Date. The date specified in Section 1.26 of the Plan.

### **ARTICLE 15 - CONTINGENT TOP HEAVY RULES**

**Section 15.01. General Rules.** If the Plan is determined to be Top-Heavy for any Plan Year, then for any such year the special vesting, minimum benefit and compensation limitations of Section 15.03 shall apply to any Employee not included in a unit of Employees covered by a Collective Bargaining Agreement between the Union and one or more Contributing Employers.

#### **Section 15.02. Determination of Top-Heavy Status.**

- (a) Determination Date. The determination date for any Plan Year is the last day of the preceding Plan Year.

- (b) Top-Heavy Status. The Plan is Top-Heavy for any Plan Year if as of the determination date the Actuarial Equivalent of the cumulative accrued benefits under the Plan for Key Employees exceeds 60 percent of the Actuarial Equivalent of the cumulative accrued benefits under the Plan for all Employees. For this purpose, the present value of the cumulative accrued benefits will be determined on the basis of five percent (5%) interest and the 1971 group annuity mortality table.
- (c) Key Employees. A Key Employee means any Employee or former Employee (including any deceased Employee) who at any time during the Plan Year that includes the determination date was an officer of the Employer having annual compensation greater than \$130,000 (as adjusted under IRC §416(i)(1) for Plan Years beginning after December 31, 2002), a 5-percent owner of the employer, or a 1-percent owner of the employer having annual compensation of more than \$150,000. For this purpose, annual compensation means compensation as set forth in Section 15.02(e)(3). The determination of who is a Key Employee will be made in accordance with IRC §416(i)(1) and the applicable regulations and other guidance of general applicability issued thereunder.
- (d) Aggregation Rules. In determining if the Plan is Top-Heavy, the Plan shall be aggregated with each other plan in the required aggregation group as defined in section 416(g)(2)(A)(i) of the Internal Revenue Code and may, in the Board's discretion, be aggregated with any other plan in the permissive aggregation group as defined in section 416(g)(2)(A)(ii) of the Internal Revenue Code.
- (e) Special Rules.
- (1) Distributions During Year Ending on the Determination Date. The present values of accrued benefits and the amounts of account balances of an Employee as of the determination date shall be increased by the distributions made with respect to the Employee under the Plan and any plan aggregated with the Plan under IRC §416(g)(2) during the one-year period ending on the determination date. The preceding sentence also shall apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under IRC §416(g)(2)(A)(i). In the case of a distribution made for a reason other than severance from employment, death, or disability, this provision shall be applied by substituting "five-year period" for "one-year period."
  - (2) If an individual is not a Key Employee for any Plan Year but was a Key Employee for any prior Plan Year, any accrued benefit for such Employee shall not be taken into account for purposes of determining if the Plan is Top-Heavy.
  - (3) For purposes of this Article 15, "Compensation" means the amount defined in Section 1.08 for the calendar year that ends within that Plan Year.
  - (4) The Board is authorized to adopt any other rules or regulations necessary to insure that the Plan complies in all respects with the Top-Heavy rules of the Internal Revenue Code.
  - (5) Employees not Performing Services During Year Ending on the Determination Date. The accrued benefits and accounts of any individual who has not performed



services for the Employer during the one-year period ending on the determination date shall not be taken into account.

- (6) Minimum Benefits. For purposes of satisfying the minimum benefit requirements of section 416(c)(1) of the Internal Revenue Code and in determining years of service with the Employer, any service with the Employer shall be disregarded to the extent that such service occurs during a Plan Year when the Plan benefits (within the meaning of section 410(b) of the Internal Revenue Code) no Key Employee or former Key Employee.

**Section 15.03. Special Vesting, Minimum Benefit, and Compensation Rules.**

The following rules will apply only to Employees not included in a unit of Employees covered by a Collective Bargaining Agreement requiring Contributions to this Plan and only if the Plan as a whole becomes Top-Heavy. Such Employees are referred to herein as Top-Heavy Employees.

(a) Vesting.

- (1) Applicability. If the Plan becomes Top-Heavy the vesting schedule set forth in Subsection (a)(2) below shall apply to the accrued benefits of every Top-Heavy Employee who has at least one Contributory Hour while the Plan is Top-Heavy. Participants who do not have a Contributory Hour while the Plan is Top-Heavy will have their vesting determined under the regular vesting schedule. Any accrued benefits which were forfeited before the Plan became Top-Heavy will remain forfeited.
- (2) Special Vesting Schedule. If the Plan becomes Top-Heavy, the following vesting schedule shall apply instead of the Plan's regular vesting schedule to the Participants defined in Subsection (1):

<u>Years of Vesting Service</u>	<u>Percentage</u>
2	20
3	40
4	60
5 or more	100

- (3) End of Top-Heavy Status. If, after being determined to be Top-Heavy, the Plan ceases to be Top-Heavy, then
  - (A) The nonforfeitable percentage of a Participant's accrued benefit before the Plan ceased to be Top-Heavy will not be reduced;
  - (B) Any Top-Heavy Employee with five or more Years of Credited Service at the time the Plan ceased to be Top-Heavy will have the vesting schedule of Subsection (2) above applied to his accrued benefits whenever earned; and

- (C) Any Top-Heavy Employee with less than five Years of Credited Service at the time the Plan ceased to be Top-Heavy will have the Plan's regular vesting provisions apply to all benefits accrued after the Plan ceased to be Top-Heavy.

(b) Special Minimum Benefit Rules.

- (1) Applicability. If the Plan becomes Top-Heavy, then for the first year that the Plan is Top-Heavy, and for all subsequent years during which it is Top-Heavy, the minimum benefit set forth in Subsection (b)(2) below shall apply to all Top-Heavy Employees (other than Key Employees) who have a Year of Credited Service during any such Plan Year.
  - (2) Special Minimum Benefit. If the Plan becomes Top-Heavy, the minimum Regular Pension benefit for Top-Heavy Employees (other than Key Employees) shall be the greater of (a) the Plan's basic Regular Pension benefit determined under Section 3.03, or (b) 2 percent of the Participant's Average Top-Heavy Compensation for each Year of Credited Service beginning after December 31, 1983, during which the Plan was Top-Heavy, up to a maximum of 10 such years.
  - (3) "Average Top-Heavy Compensation" shall mean the average Compensation for work performed while a Participant is in this Plan for the period of consecutive Top-Heavy Years, not exceeding five, during which the Participant had the greatest aggregate Compensation. Top-Heavy Years are those Plan Years beginning on or after January 1, 1984, for which the Plan is determined to be Top-Heavy.
- (c) Compensation Limitation. In no event shall compensation for any Plan Year that this Plan is a Top-Heavy Plan exceed the limits in section 401(a)(17) of the Internal Revenue Code as in effect at the first day of the Year.

**APPENDIX A**  
**To the Pension Plan for the**  
**Cement Masons Pension Trust Fund for Northern California**

**NON-RECURRING RETIREE BENEFIT SUPPLEMENTS**

- a. All Pensioners whose Annuity Starting Dates are effective on or before January 1, 1994, and whose pensions are in pay status (not deceased or suspended) as of January 31, 1994, will be issued on January 31, 1994, a non-recurring benefit supplement equal to one month's benefit as of January 1, 1994.
- b. All Pensioners and Beneficiaries whose Annuity Starting Dates are effective on or before September 1, 1994, and whose pensions are in pay status (not deceased or suspended) as of November 1, 1994, will be issued on November 1, 1994, a non-recurring benefit supplement equal to one month's benefit as of September 1, 1994.

- c. All Pensioners and Beneficiaries whose Annuity Starting Dates are effective on or before September 1, 1995, and whose pensions are in pay status (not deceased or suspended) as of December 1, 1995, will be issued on December 1, 1995, a non-recurring benefit supplement equal to one month's benefit as of September 1, 1995.
- d. All Pensioners and Beneficiaries whose Annuity Starting Dates are effective on or before November 1, 1996, and whose pensions are in pay status (not deceased or suspended) as of November 30, 1996, will be issued on December 15, 1996, a nonrecurring benefit supplement equal to one month's benefit as of November 1, 1996.
- e. All Pensioners and Beneficiaries whose Annuity Starting Dates are effective prior to January 1, 1997, and whose pensions are in pay status (not deceased or suspended) as of October 31, 1997, will be issued on November 15, 1997, a nonrecurring benefit supplement equal to one month's benefit as of October 1, 1997.
- f. All Pensioners and Beneficiaries whose Annuity Starting Dates are effective on or before September 1, 1998, and whose pensions are in pay status (not deceased or suspended) as of September 30, 1998, will be issued on October 15, 1998, a nonrecurring benefit supplement equal to one month's benefit as of September 1, 1998.
- g. All Pensioners and Beneficiaries whose Annuity Starting Dates are effective on or before November 1, 1999, and whose pensions are in pay status (not deceased or suspended) as of November 30, 1999, will be issued on December 1, 1999, a nonrecurring benefit supplement equal to one month's benefit as of November 1, 1999.
- h. All Pensioners and Beneficiaries whose Annuity Starting Dates are effective on or before November 1, 2000, and whose pensions are in pay status (not deceased or suspended) as of November 30, 2000, will be issued on December 1, 2000, a nonrecurring benefit supplement equal to one month's benefit as of November 1, 2000.
- i. All Pensioners and Beneficiaries whose Annuity Starting Dates are effective on or before October 1, 2001, and whose pensions are in pay status (not deceased or suspended) as of October 31, 2001, will be issued on November 1, 2001, a non-recurring benefit supplement equal to one month's benefit as of October 1, 2001.

\* \* \* \* \*

The undersigned Chairman and Co-Chairman of the Board of Trustees of the Cement Masons Pension Trust Fund for Northern California hereby certify that at a meeting of the Board of Trustees held on January 15, 2015, the Pension Plan of the Cement Masons Pension Trust Fund for Northern California Restated Effective September 1, 2014 was adopted pursuant to the authority given to the Board by Section 1 of Article IV of the Trust Agreement dated November 2, 1959 establishing the Fund and Article 13 of the Pension Plan

Executed this 15<sup>th</sup> day of January, 2015.

/s/ \_\_\_\_\_  
 Hector Cortez, Chairman  
 5334356v2/00585.025

/s/ \_\_\_\_\_  
 Brian Gardner, Co-Chairman