

# OPERATING ENGINEERS TRUST FUNDS

I.U.O.E. LOCAL 12 HEALTH & WELFARE / PENSION / VACATION / TRAINING

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**OPERATING ENGINEERS  
WORKERS' COMPENSATION TRUST  
ALTERNATIVE DISPUTE RESOLUTION PROGRAM**

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AGREEMENT AND DECLARATION OF TRUST  
FOR THE  
OPERATING ENGINEERS' WORKERS' COMPENSATION TRUST FUND

This Agreement and Declaration of Trust is entered into between Southern California Contractors Association, Inc. (Association); and International Union of Operating Engineers, Local Union No. 12 (Union).

ARTICLE 1. REASONS FOR AGREEMENT

1.1. The Union and Association have entered into Collective Bargaining Agreements which provide, among other things, for the improvement of the quality and delivery of Workers' Compensation benefits to injured employees and the creation of a safety group established pursuant to a Joint Labor-Management Committee which will establish a written safety program designed to decrease the severity and incidence of work-related injuries suffered by employees.

1.2. The Union and Association desire to effectuate the benefits set forth in the Collective Bargaining Agreements and recognize that the creation of a Trust pursuant to 29 U.S.C. 186 is the appropriate vehicle for that purpose.

ARTICLE 2. DEFINITIONS

As used in this Trust Agreement, the following words shall have the following meanings:

2.1 Collective Bargaining Agreements means (a) the Southern California Master Labor Agreements negotiated between the Associations and the Union which provide for the making of contributions to the Operating Engineers' Workers' Compensation Trust Fund and

(b) any other Collective Bargaining Agreements between the Union and any employers or associations of employers which provide for the making of contributions to the Trust Fund (subject to the approval of the Trustees) and (c) any extensions, amendments, modifications or renewal of any Collective Bargaining Agreements, or any substitute or successor agreements which provide for such contributions.

2.2 Committee means the Trustees when acting as the Joint Labor-Management Committee in forming a written group safety plan.

2.3 Employees means all employees of an employer on whose behalf contributions to the Trust Fund are required as a result of the employees' performance of or receipt of payment for, one or more hours of employment pursuant to any of the Collective Bargaining Agreements.

2.4 Employer means a person or entity who employs one or more employees and who contributes or assumes an obligation to contribute to the Trust.

2.5 Employer Association or Associations means the above-named multi-employer Associations party to this Trust Agreement.

2.6 Fund or Trust means the Trust Fund created and established by this Agreement. The Trust Fund shall include all contributions from employers, interest, income and returns thereon and any other money or property of any kind and character received and held by the Trustees, from any source whatsoever for the use and purposes set forth in this Agreement.

2.7 Plan means the written Group Safety Plan developed by the Committee.

2.8 Trust Agreements means this Agreement and Declaration of Trust, as well as any amendments to the Trust Agreement.

2.9 Trustees means the persons who are selected in accordance with the Trust Agreement and who are fiduciaries whose responsibility it shall be to administer the Trust Fund

and whose responsibility it will be to act as the Committee.

2.10 Union means International Union of operating Engineers, Local Union No. 12.

2.11 Workers' Compensation benefits means the expedited delivery of care and the process of administration under the Addendum to the Agreement.

### ARTICLE 3. TRUSTEES

3.1 Administration. The Trust Agreement and Committee shall be administered by a Board of Trustees consisting of six Trustees, three of whom shall be designated "Employer Trustees" and three of whom shall be designated "Union Trustees".

3.2. Appointment of Employer Trustees. The Employer Trustees shall be appointed in writing by the Association, which Association are irrevocably designated by each Employer as his or its attorneys-in-fact for the purpose of appointing and removing Trustees and Successor Trustees.

3.3. Appointment of Union Trustees. The Union Trustees shall be appointed in writing by the Union.

3.4. Initial Trustees. The signatures of the original Trustees appended to the Trust Agreement shall constitute the Trustees' acceptance of office and agreement to act under, and be subject to all the terms and conditions of the Trust Agreement.

3.5. Successor Trustees. Successor Trustees shall sign an acknowledgment of receipt and acceptance of a counterpart of the Trust Agreement, and such signature shall constitute their acceptance of the office and agreement to act under, and be subject to all of the terms and conditions of the Trust Agreement.

3.6. Term of Service as Trustee. Each original Trustee, and each Successor

Trustee, shall serve until that Trustee's death, incapacity, resignation or removal. Any retiring Trustee shall forthwith turn over to the remaining Trustees all records, books, documents, monies and other property in that Trustee's possession owned by the Fund or incident to the administration of the Fund.

3.7. Removal. An Employer Trustee may be removed at will, with or without cause, by the Association. A Union Trustee may be removed at will, with or without cause, by a writing signed by the Union. Failure to attend two successive regularly scheduled meetings of the Fund shall be grounds for removal of a Trustee upon written request of any three Trustees.

3.8. Resignation. A Trustee may resign and become and remain fully discharged from further duty or responsibility hereunder upon giving thirty days' written notice to the remaining Trustees and to the party which shall have appointed or selected such Trustee.

3.9. Vacancies. If a vacancy occurs among the Trustees for any reason, the party by whom such vacancy was originally filled shall forthwith designate a Successor Trustee. Appointment of a Successor Trustee shall be evidenced in the same manner as appointment of an initial Trustee. Any Successor Trustee shall be vested with all rights, powers and duties of a Trustee as if originally named as Trustee. The powers of the remaining Trustees to act shall not be impaired or limited in any way pending the designation of a Successor Trustee to fill any vacancy.

3.10. Procedures of the Association. The procedures through which the Employer Trustees are to be appointed, removed or replaced by the Association are to be determined exclusively by such Association. If such procedures provide for the appointment, removal or replacement of one or more Trustees by a particular Association or group thereof, the Trust Fund shall be advised in writing by the Associations as to which of the Associations has such right as to which Employer Trustee. Should any such particular Association no longer be a

party to the Trust Agreement and to the Collective Bargaining Agreements, then the remaining Associations shall advise the Fund in writing which of the remaining Associations then has such right as to which Trustee.

#### ARTICLE 4. CREATION OF TRUST FUND

4.1 Name of Trust Fund. There is hereby established the Operating Engineers' Workers' Compensation Trust Fund which shall be used solely for the purposes set forth in this Agreement and Declaration of Trust. The Trustees shall at all times receive and hold all assets of the Trust as Trustees solely for the purposes set forth in this Declaration of Trust.

4.2. Purposes of Trust Fund. This Trust is established for the sole and exclusive benefit of employees, pursuant to 29 U.S.C. 186, in order to provide benefits contained within the Collective Bargaining Agreement which benefit employees, their families and dependents improving delivery of benefits and for treatment of injuries and illnesses resulting from occupational activity and by assuring creation and implementation of safety training programs which will decrease the incidence and severity of occupational injuries which interrupt the earning capacity of employees. It is not contemplated or intended that any portion of this Fund shall be utilized to pay or reduce the liabilities of an insurer from whom an Employer purchases a policy of Workers' Compensation insurance or the liability of any Employer caused by the failure of an Employer to purchase a policy of Workers' Compensation insurance. It is further not intended or contemplated that any portion of this Trust Fund shall be used to provide retirement pay, pensions, annuities, unemployment benefits, or to increase any monetary workers' compensation benefits provided for under the laws of the State of California.

4.3. Nature of Fund. The Fund shall consist of all contributions required hereunder to be made for the establishment and maintenance of the Workers' Compensation

benefits set forth in the Collective Bargaining Agreement to be provided by this Fund.

4.4. Expenditures. The Trustees shall use the assets of the Fund solely for the payment of expenses for the Workers' Compensation administrative benefits contained within the Collective Bargaining Agreement, the establishment of the Plan and for the reasonable and necessary costs of administration of the Fund all of which shall be for the sole and exclusive benefit of the employees.

4.5. Location. The Fund shall have its principal office in the County of Los Angeles, State of California.

4.6. Vesting. The Trustees shall have the continuing supervision, control and direction of the Fund for the uses, purposes and duties set forth in the Trust Agreement and shall be vested with all right, title and interest to it. The Trustees may hold title to the property in the name of the Fund or in the name of a Corporate Co-Trustee or its nominee and may delegate to a Corporate Co-Trustee such other powers as the Trustees in their discretion deem appropriate.

4.7. No reversions. No portion of the Fund's assets shall at any time revert to, or be recoverable by, any of the Associations, any Employer, or the Union, or be used for, or diverted to, purposes other than those set forth in the Trust Agreement and the refund of erroneous payments.

4.8. No Guarantors. Neither the Association, any Employer, the Union, nor any officer, employee, agent or member of any of them, shall be liable or otherwise responsible for any debts, liabilities or obligations of the Fund or the Trustees, nor shall the Trustees be personally liable for the debts, liabilities or obligations of the Fund.

## ARTICLE 5. ADMINISTRATION.

5.1. General Powers. The Trustees shall have the power to administer the

Fund, having and performing all powers and duties reasonably necessary or appropriate to maintain and operate the Fund in such a way as to accomplish its objectives.

5.2. Enumerated Powers. Without limitation of any powers set forth elsewhere in the Trust Agreement, the Trustees shall be empowered to do the following in the name of the Fund.

a. Invest the assets of the Fund in such investments as they may in their sole discretion select.

b. Sell, exchange, lease, convey, or otherwise dispose of any assets as they may in their sole discretion select, and execute and deliver any documents in connection with such transactions.

c. Appoint a bank to act as Co-Trustee for all or part of the assets of the Fund, which shall receive and hold the assets which the Trustees authorize, and which shall dispose of the assets as the Trustees direct.

d. Enter into contracts to carry out the terms of the Trust Agreement.

e. Institute, compromise, settle, litigate, or withdraw claims or actions brought to carry out the purposes of the Fund, as in their sole discretion they deem advisable; provided, however, that this clause shall not excuse any violation of any of the Collective Bargaining Agreements.

f. Borrow such money in such amounts and on such terms as in their sole discretion they deem advisable to carry out the purposes of the Fund.

g. Lease or purchase premises, supplies, or equipment.

h. Hire, discharge, or retain and pay such employees or independent contractors as in their sole discretion they deem advisable to carry out the purposes of the Fund.

i. Maintain a bank account or accounts.

j. Construe the Trust Agreement and any other documents which the Trustees adopt; and any construction by the Trustees, adopted in good faith, shall be final and binding upon the Associations, Employers, Employees, and the Union.

k. Delegate any of their ministerial powers or duties to any one or more of the remaining Trustees, or to any agent or employee engaged by the Trustees.

l. Delegate to an investment manager the power to invest and reinvest the assets of the Fund.

m. Coordinate the Fund's administrative activities with the administrative activities of the boards of trustees of other employee benefit plans or trusts established or to be established for building trades employees in California to such extent as may be necessary or desirable to enhance effectiveness, minimize costs, or eliminate unnecessary bookkeeping and other expenses for the Fund.

n. Enter into merger agreements with trustees of similar funds in California and provide for the merger of other funds into the Fund.

o. Perform any other act not specifically enumerated, which is reasonably necessary or appropriate to carry out the purposes of the Fund.

5.3. Providing Benefit. In order to provide the Workers' Compensation benefits to Employees contained within the Collective Bargaining Agreements, and as defined herein, the Trustees shall take the following actions.

a. Retain as an employee of the Fund or an independent contractor to the fund at least one ombudsman. The ombudsman shall assist employees in securing Workers' Compensation benefits in accord with the Collective Bargaining Agreement.

b. Retain as independent contractors, mediators and arbiters who shall resolve disputes related to claims for Workers' Compensation benefits in accord with the

provisions set forth in the Collective Bargaining Agreement.

c. Retain a Fund Manager which entity or individual shall arrange for mediations and arbitrations as set forth in the Collective Bargaining Agreement and shall maintain the records of arbitration proceedings as set forth in the Collective Bargaining Agreement.

d. Pay all costs ancillary to the mediation and arbitration procedures as set forth in the Collective Bargaining Agreement.

e. Maintain and update the written Safety Plan as developed by the Trustees acting as the Committee.

5.4. Compensation. The Trustees, other than the Co-Trustee, shall not receive compensation for any of their services.

5.5. Personal Liability. To the extent permitted by law, the Trustees shall not be personally liable for any conduct in which they engage on behalf of the Fund or in their status as the Committee and shall be indemnified for any amounts paid or incurred as a result of any liability.

5.6. Insurance. The Trustees shall purchase and at all times maintain fiduciary liability insurance in amounts sufficient to protect the Fund from liability or loss occurring by reason of the act or omission of a fiduciary. The premiums for such insurance shall be paid out of the assets of the Fund.

5.7. Books of Account. The Trustees shall keep books of the account to be audited annually by a certified public accountant selected by the Trustees.

5.8. Execution of Documents. The Trustees may authorize one Union and one Employer Trustee to execute any documents, or may act by a majority of the Union and a majority of the Employer Trustees actually executing a document.

5.9. Deposits and Withdrawals. All monies received by the Trustees shall be deposited in a bank prior to being used, and all withdrawals shall be made only by a check or withdrawal slip signed by those Trustees authorized by resolution to do so, provided that any resolution shall require the signature of an equal number of Union and Employer Trustees.

5.10. Surety Bond. The Trustees shall secure fidelity and other bonds as may be required or appropriate for each Trustee or other person authorized to receive, handle, deal with or draw upon the monies in the Fund for any purpose whatsoever. Such bonds are to be in such reasonable amounts and to be obtained from such source as the Trustees shall determine. The cost of such bonds shall be paid out of the assets of the Fund.

5.11. Audits. The Trustees or their designee may, at reasonable times and during normal business hours, audit or cause the audit or inspection of any of the books and records of any Employer which the Trustees consider pertinent in connection with contributions and/or reports. If the audit or inspection discloses that the Employer is in default in contributions to the Fund, or if the audit or inspection is made because of the failure of the Employer to submit reports or other books or records as required by the Trustees, the Employer shall, upon demand, pay to the Fund the actual costs of such audit or inspection.

5.12. Collection of Delinquencies and Enforcement of Audit Rights. The Trustees shall have the power in the name of the Fund, in the name of the Corporate Co-Trustee, in their names or otherwise, as in their discretion may be deemed necessary or desirable, to demand and enforce audits and the prompt payment of contributions to the Fund including payments due to the delinquencies as provided in Section 7.4, and to assert and enforce all priorities, lien rights, and other claims or rights with respect to any contributions or payments belonging to the Fund, including the rights to file priority and other claims in bankruptcy. If any Employer refuses to permit an audit or defaults in the making of contributions or payments and if the Trustees consult

or cause to be consulted legal counsel with respect thereto, there shall be added to the obligation of the Employer who is in default, reasonable attorneys' fees, court costs and all other reasonable expenses incurred in connection with such suit or claim, including any and all appellate proceedings therein.

#### ARTICLE 6. MEETINGS AND DECISIONS OF TRUSTEES.

6.1. Officers. Annually, the Trustees shall elect a Chair and Secretary, the Chair being either a Union Trustee or Employer Trustee, and the Secretary being the opposite.

6.2. Meetings. The Trustees shall meet upon call of the Chair or Secretary. To be valid, a meeting may be held no earlier than eight days following the date on which written notice is mailed first class, postage prepaid, to all Trustees or, if notice is given by any other method, five days after written notice is actually received by all Trustees, unless all Trustees consent in writing, which consent may be given before or within ten days after the meeting.

6.3. Action without Meeting. Action may be taken without a meeting by unanimous written consent of all Trustees.

6.4. Quorum. Two of the Union Trustees and two of the Employer Trustees shall constitute a quorum.

6.5. Majority Vote. All action shall be taken by vote of the Trustees. The vote shall be carried by a majority of the Trustees present unless, prior to the vote, one or more Trustees request a unit vote. When a unit vote is requested, the Union Trustees shall have one vote and the Employer Trustees shall have one vote. Each side shall decide how to cast its respective vote by a majority vote of its members present at the meeting. If either side is unable to cast a vote because of a deadlock among its own members, the motion with respect to which the unit vote is sought shall be deemed deadlocked.

6.6. Deadlocks.

a. If the Trustees have a tie vote, an impartial umpire to cast the deciding vote shall be chosen forthwith by the Trustees. If the Trustees cannot agree on an umpire, the Trustees may secure from the American Arbitration Association a list of seven arbitrators. Within 72 hours of receipt of the list, the Chair and the Secretary shall select an umpire from the list by each side alternately striking three names, the party who secured the list to determine the order of striking. The remaining name shall be that of the umpire.

b. Upon the umpire being selected, a meeting of the Trustees shall be held as soon as practicable, which shall be attended by the umpire, who shall hear evidence or arguments presented by either group of Trustees upon the question or resolution upon which the tie vote occurred. The umpire shall as soon as practicable and, in any case, within 14 days after the meeting at which the umpire was present and heard the evidence and arguments, cast a vote by written instrument for or against the question or resolution upon which the tie has occurred. The umpire shall specify in writing the reasons for casting the vote. The umpire shall deliver a copy of the written vote to the Chair and Secretary. The decision of the umpire shall be final and binding.

c. The fees and expenses of selecting an umpire and of the arbitration shall be proper charges against the Trust Fund.

d. No matter in connection with the interpretation or enforcement of any collective bargaining agreement shall be subject to arbitration under this section.

6.7. Minutes. Minutes shall be kept of all meetings.

6.8 Robert's Rules of Order. Robert's Rules of Order shall govern if the Trust Agreement or resolutions of the Trustees do not provide otherwise.

## ARTICLE 7. CONTRIBUTIONS.

7.1. Contributions. The Trustees shall accept contributions paid pursuant to the Collective Bargaining Agreements and may accept contributions from other sources, provided the receipt of contributions from other sources does not alter the deductibility of the Employers contributions. Contributions shall be paid into the Fund in such manner and with such reports as the Trustees may prescribe.

7.2. Contributions Pursuant to a Collective Bargaining Agreement. Each Employer shall contribute to the Fund the amount specified in the Employer's Collective Bargaining Agreement. Contributions to the Fund shall be due commencing on the date specified in each Employer's Collective Bargaining Agreement and shall be payable in the County of Los Angeles, California, in regular monthly installments, except as otherwise provided in the Employer's Collective Bargaining Agreement. Each monthly contribution shall include all payments which have accrued for work performed during the preceding calendar month. However, in lieu of a calendar month an Employer may use a fiscal month commencing and ending with the Employer's payroll period which is closest to the last day of the month. Each monthly contribution shall be accompanied by a report in a form prescribed by the Trustees. Each contribution to the Trust Fund shall be made promptly and in any event on or before the 20th day of the calendar month in which it becomes payable (or such other date as may be expressly established for contributions to the employee fringe benefit trust funds to which the Employer is reporting on the same report form), on which date said contribution if not then paid in full shall be delinquent.

7.3. Nonpayment of Contributions. The failure of an Employer to pay the contributions required hereunder at the times and in the manner required by the Trustees shall constitute a violation of such Employer's obligations hereunder. Nonpayment by an Employer of

any contributions as herein provided shall not relieve any other Employer of its obligation to make payment of its required contributions. The Trustees may take any action necessary to enforce payment of such contributions due hereunder, including exercise of the right to sue such Employer in a court of competent jurisdiction; and the delinquent Employer shall be liable to the Fund for all expenses of collection thereof, including actual attorneys' fees, incurred by the Trustees.

7.4. Damages for Contribution Delinquencies. The regular and prompt filing of Employer reports and the regular and prompt payment of Employer contributions and other amounts owed to the Fund is essential to the maintenance in effect of the Fund, and it would be extremely difficult, if not impracticable, to fix the actual expense and damage to the Fund which would result from the failure of an Employer to make reports and to pay contributions and other amounts in full within the time provided. Therefore, the amount of damages to the Fund resulting from failure to make reports or pay contributions or other amounts within the time specified, shall be deemed to include:

- (i) interest, plus
- (ii) an additional sum equal to the greater of interest or the liquidated damages provided for herein.

Interest shall accrue on each amount owed by an Employer from the date such payment became due until the date on which such payment and all attendant interest and liquidated damages are actually received by the Fund. The rate of interest shall equal the per annum. rate of interest established by the Federal Reserve Board of San Francisco on advances to member banks under Sections 13 and 13(a) of the Federal Reserve Act prevailing on the 25th day of the month preceding the date on which such contribution or payments became delinquent plus 5% per annum. Liquidated damages shall equal the greater of \$25.00 or 20% of the amount with respect

to which such damages are assessed. These amounts shall become due and payable to the Fund as interest and as liquidated damages and not as a penalty, commencing with the day immediately following the date on which the report or the contribution or contributions became due. Liquidated damages shall be paid for each delinquent report even though a delinquent report shall show no contribution due; and shall be paid in addition to the liquidated damages and interest due on any contributions pertaining to the report. To the extent that damages available to the employee benefit trust funds on the same Employer report pertaining to the delinquency differ from those set forth in this section, the damages available to the Fund for the delinquency in contributions or in reports shall be of the same measure as those available to said employee benefit trust funds. The Trustees, in their discretion, for good cause (and the Trustees shall have the sole right to determine what shall constitute good cause) shall have the right and power to waive all or any part of any sums due to the Fund as interest and liquidated damages.

7.5 Reservation of Rights of Union. Nothing in the Trust Agreement shall be deemed to authorize or prevent economic action by the Union against any Employer who is delinquent in contributions to the Fund. All rights of the Union to refuse to furnish workers to any delinquent Employer, or to withdraw Employees from the job of any such Employer, or to strike or take other economic action against the Employer, shall be determined by the provisions of the Collective Bargaining Agreement and by applicable rules of law.

## ARTICLE 8. ADMISSION OF ADDITIONAL EMPLOYERS

8.1. Acceptance of Additional Employers. California law places substantial restrictions upon which employers may participate in the Workers' Compensation program established in the Collective Bargaining Agreement. Pursuant to California law, only groups of employers who participate in a Joint Labor-Management Safety Committee which has

established a written Safety Plan and which group of employers develops or projects annual Workers' Compensation premiums of Two Million Dollars or more on work covered by the Collective Bargaining Agreement may participate in the Workers' Compensation program established in the Collective Bargaining Agreement. Pursuant to California law, the only individual employers that are not part of such group that may participate in the Workers' Compensation program are individual employers that develop or project annual Workers' Compensation premiums of Two Hundred and Fifty Thousand Dollars or more on work covered by the Collective Bargaining Agreement. Due to the restrictions of California law, the only individual employers that are not represented by the Associations who may become a party to the Trust Agreement are employers that develop or project annual Workers' Compensation premiums of Two Hundred Fifty Thousand Dollars or more on work covered by the Collective Bargaining Agreement and whose Collective Bargaining Agreement requires contributions to this Trust Fund and who executes an acceptance of this Trust Agreement in a form acceptable to the Trustees. Any group of Employers that are not represented by the Associations but who are represented by some other Association and which Employers develop or project annual Workers' Compensation premiums of Two Million Dollars or more on work covered by the Collective Bargaining Agreement may become parties to this Trust Agreement only upon amendment of this Trust Agreement pursuant to which such other Association and its represented, Employers becomes part of the Joint Labor-Management Safety Committee and upon acceptance of this Trust Agreement in a form acceptable to the Trustees. The Trustees, the Associations and the Union shall not unreasonably deny the admission of such an other Association and its represented Employers and shall take all appropriate steps to effectuate such admission.

8.2. Acceptance of Trust Agreement and Contributions to Trust Fund. Any Employer who commences participation pursuant to the foregoing paragraph and who makes one or more

contributions to the Trust Fund with the approval of the Trustees, assumes and shall be bound by all of the obligations imposed by this Trust Agreement upon the Employer, is entitled to all rights under the Trust Agreement and is otherwise subject to it in all respects.

8.3. Condition of Admission. The original Associations and the Union shall at all times have the right and power to select and remove the Trustees and their successors under the Trust Agreement in accord with the terms of Article 3. Any Employer or Union contributing to this Trust Fund after the initial effective date agrees to be bound by this provision.

#### ARTICLE 9. GENERAL PROVISIONS.

9.1. Scope of Charge to Trustees. The duties, responsibilities, liabilities and disabilities of any Trustee under the Trust Agreement shall be determined solely by the express provisions of the Trust Agreement and no further duties, responsibilities, liabilities or disabilities shall be implied or imposed.

9.2. Trustees' Use of Trust Fund Name. The name of the Trust Fund may be used to designate the Trustees collectively and all instruments may be effected by the Trustees in such name.

9.3. Acceptable Means of Notice. Any notice required to be given under the terms of the Trust Agreement shall be deemed to have been duly served if given in writing to the person to be notified (a) by personal delivery to that person, (b) by personal delivery to such person at that person's last known address as shown in the records of the Trust Fund, (c) by wire delivery to such person at said last known address, or (d) by mail to such person at said last known address, provided the notice is sent in a sealed envelope, first class, with all postage prepaid.

9.4. Binding Effect of Trust Agreement. The Trust Agreement shall be binding upon and inure to the benefit of all Employers who are now or hereafter may become represented by

the Associations or party. to the Trust Agreement, subject to the approval of the Trustees, and to the heirs, executors, administrators, successors, purchasers and assigns of the Associations, any Employer, the Union, and the Trustees, subject to the approval of the Trustees.

9.5. Execution by Counterpart. The Trust Agreement may be executed in a number of counterparts, each of which shall have the force and effect of any original, and no more than one counterpart need be signed by any party. Each counterpart shall be filed in the principal office of the Trust Fund.

9.6. Interpretation and Operation in Accordance with Law. All questions pertaining to the Trust Agreement, the Trust Fund and their validity, administration and construction, shall be determined in accordance with the laws of the State of California and with any pertinent laws of the United States.

9.7. Severability. If any provision of the Trust Agreement or any step in the administration of the Trust Fund is held to be illegal or invalid, that shall not affect the remaining portions of the Trust Agreement unless such illegality or invalidity prevents accomplishment of the objectives and purposes of the Trust Agreement. In such event, the parties will immediately commence negotiations to attempt to remedy the defect.

9.8. Acts and Authority of Union. In the execution, amendment and implementation of the Trust Agreement, the Union acts for and on behalf of the Employees and as their collective bargaining representative and agent, and every agreement or act of the Union in connection with the establishment, maintenance and operation of the Trust Fund shall be deemed to be and is the agreement or act of the employees concerned or affected by such agreement or action.

9.9. Acts and Authority of Associations. In the execution, amendment and implementation of the Trust Agreement, the Associations act for and on behalf of the Employers represented by the Associations, and on behalf of any other Employer, person or other entity who

is required by any of the Collective Bargaining Agreements and permitted by this Trust Agreement to make contributions to the Trust Fund or who in fact makes one or more contributions to the Trust Fund; provided such contribution or obligation to make such was favorably approved by the Trustees. Every agreement or act of the Associations in connection with the establishment, maintenance and operation of the Trust Fund shall be deemed to be and is the agreement or act of the Employers, Employer, person or other entity concerned or affected by such agreement or action.

9.10. Tax Deductibility and Qualification. It is the parties' intent that contributions to the Trust Fund shall be at all times tax deductible by the Employers in the taxable year when paid and that the Trust Fund shall be at all times tax exempt. Application for the qualification of the Trust Fund under the Internal Revenue Code shall be made as soon as practicable, and the parties and the Trustees shall do whatever may be necessary to secure such qualification as soon as possible. If any present or future administrative or judicial ruling holds that any provision of the Trust Agreement prevents or defeats the qualification of the Trust Fund or any other objective stated in this section, or if it is necessary or desirable to amend the Trust Agreement to accomplish any such objective, the parties will forthwith enter into negotiations with regard to the amendment of the Trust Agreement in such respects as may be necessary to accomplish such qualification or other objective. consistent with the other objectives and purposes of the Trust Agreement, and any such amendment shall be effective, insofar as practicable, as of the effective date of the Trust Agreement or as of the effective date of any such law or regulation hereafter enacted or adopted, as the case may require.

9.11. Joinder of Parties and Effect of Final Judgments. In any action or proceeding affecting the Trust Fund, it shall be necessary to join as parties only the Trustees, and no Associations, Employers, Union, Employees, or any other person shall be entitled to notice of

any such proceeding or to service of process. Any final judgment entered in any such action or proceeding shall be binding upon all of the above-mentioned parties so long as such judgment does not attempt or purport to impose any personal liability upon or against any party not joined or not served in any such action or proceeding.

9.12. Gender, Plurality and Captions. Words used in the Trust Agreement in the masculine gender shall be construed to be in the feminine or neuter gender where they would apply, and vice versa,; and words in the singular shall be construed to be in the plural where they would, apply, and vice versa. The captions used in the Trust Agreement are for convenience in reference. They shall not be considered in the interpretation and construction of the provisions of the Trust Agreement.

#### ARTICLE 10. AMENDMENT, DURATION AND TERMINATION.

10.1. Amendment by Union and Associations. The Trust Agreement may be amended by mutual agreement of the Associations and the Union subject to the terms and conditions of the Collective Bargaining Agreements and any applicable law or regulations.

10.2. Amendment by Trustees. The Trust Agreement may be amended by the Trustees. Any amendment by the Trustees shall cease to be effective if either the Associations or the Union veto the amendment within 90 days after receiving notice of its adoption. A veto shall be effected by delivery of written notice of the veto to the Trust Fund.

10.3. Notice of Amendments. Whenever an amendment is adopted, a copy shall be distributed to each Trustee, the Associations and the Union.

10.4. Term. Subject to the provisions of this article and Section 9.7, the Trust Fund is irrevocable and the provisions of the Trust Agreement shall continue in effect during the term of the Collective Bargaining Agreements, and any amendments, modifications, renewals, or

extensions thereof with respect to such Collective Bargaining Agreements as provided for the continuation of payments into the Trust Fund or continuance of the Trust Fund.

10.5. Termination. The Trust Agreement and the Trust Fund may be terminated at any time by the Associations and the Union in a writing executed by each, subject to the provisions of Section 4.7. Upon the termination of the Trust Fund, any monies remaining after the payment of all expenses and obligations of the Trust Fund shall be exhausted by application to the following purposes so long as the assets of the Trust Fund will permit after the payment of all expenses of operating and/or winding up the Trust Fund.

a. To pay or provide for the payment of all reasonable and necessary expenses in connection with collecting the Employer contributions and administering the affairs of the Trust Fund, including but without limitation, all expenses which may be incurred in connection with the establishment of the Trust Fund, the providing of fidelity bonds, the employment of administrative, legal, expert and clerical assistance, the purchasing or leasing of such materials, supplies and equipment as the Trustees in their discretion find necessary and appropriate in the performance of their duties.

b. To transfer all remaining assets to a successor fund or other organization which the Trustees shall determine as having purposes substantially identical to those of the Trust Fund.

c. To convert all remaining assets to monies and to refund those monies to the Employees and other parties on whose behalf contributions or donations were made. The order of any such refund shall be in reverse chronological order. Before approving such a disposition, the Trustees shall assess the potential tax consequences and take such steps as may be necessary to minimize the consequences and to provide adequate notice of the consequences to the Employers, Employees and other parties as may be affected.

10.6. Limitation on Term. In no event shall the Trust Fund continue for a longer period

than permitted by law.

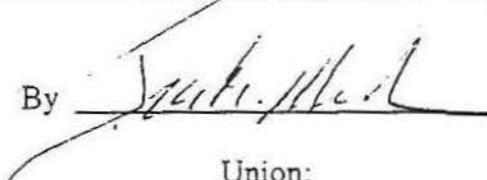
Executed at Los Angeles County, California, as of the      day of      , 1999.

EACH OF THOSE SIGNING FOR THE "ASSOCIATION" OR "ASSOCIATIONS" BELOW EXPRESSLY WARRANTS THAT THE SIGNER IS AUTHORIZED TO EXECUTE THIS TRUST AGREEMENT ON BEHALF OF THE ASSOCIATION LISTED OVER THE SIGNER'S SIGNATURE AND WARRANTS THAT ALL OF THE ELIGIBLE MEMBERS OF THAT "ASSOCIATION" ARE PARTIES TO, AND BOUND BY THE TERMS AND PROVISIONS OF THIS TRUST AGREEMENT FOR ITS DURATION AND FURTHER WARRANTS THAT ANY INDIVIDUAL EMPLOYER WHO SHALL BECOME AN ELIGIBLE MEMBER OF THAT "ASSOCIATION" ON OR AFTER THIS DATE AND DURING THE TERM OF THIS TRUST AGREEMENT SHALL AUTOMATICALLY BECOME SUBJECT TO, AND BOUND BY THIS TRUST AGREEMENT DURING ITS TERM.

Association:

SOUTHERN CALIFORNIA CONTRACTORS' ASSOCIATION INC.

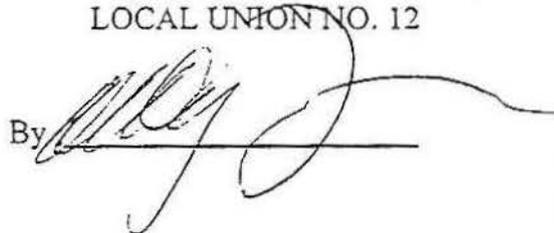
By



Union:

INTERNATIONAL UNION OF OPERATING ENGINEERS,  
LOCAL UNION NO. 12

By



The undersigned initial Trustees acknowledge that they have read the Trust Agreement, understand it, and agree to act as Trustees under it, to comply with all of its terms and provisions, and to hold the Fund in trust for the uses and purposes set forth in the Trust Agreement.

UNION TRUSTEES

EMPLOYER TRUSTEES

\_\_\_\_\_  
Wm. C. Waggoner

*Mickey J. Adams*  
\_\_\_\_\_  
Mickey J. Adams

*Dale I. Vawter*  
\_\_\_\_\_  
Dale I. Vawter

*Steve Billy*  
\_\_\_\_\_  
Steve Billy

\_\_\_\_\_  
John Spaulding  
*John Spaulding*  
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*Scott A. Hill*  
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RULES OF THE OPERATING ENGINEERS  
WORKERS' COMPENSATION TRUST ALTERNATIVE DISPUTES  
RESOLUTION PROGRAM

Pursuant to the provisions of California Labor Code Section 3201.5 the Operating Engineers Workers' Compensation Trust Alternative Disputes Resolution Program replaces all of those dispute resolution processes contained in Division 4 of the California Labor Code. These rules may be changed by the Board of Trustees of the Operating Engineers Workers' Compensation Trust at any time. The rules are intended to facilitate and expedite the resolution of disputes involving work-related injuries.

**ARTICLE 1. Pre-Arbitration Discovery:**

**Section 1.** Pre-Arbitration discovery shall be allowed in the same manner as discovery is permitted in California Labor Code Section 5710. Provided any references therein to the appeals board or workers' compensation judges or referees shall be deemed to be references to the Trust, Mediators or Arbitrators as the context so require.

**Section 2.** Upon filing of a claim of workers' compensation injury with any contributing member of the Trust at the request of any concerned party it shall be the duty of all parties to immediately serve upon all concerned parties, as the case may be, copies of all medical reports in their possession or under their control, and related to the injury or that may come into their possession or under their control.

**ARTICLE I-A. Ombudsman:**

**Section 2.a** The operating Engineers' Workers' Compensation Trust Fund, shall employ, with the approval of the Trustees, at least one individual to serve as an ombudsperson. The ombudsperson is an employee at will and as such may be discharged/removed upon mutual agreement of the trustees. A vote of the trustees of the Operating Engineers' Workers' Compensation Trust Fund shall serve to affect any personnel action deemed necessary.

The ombudsperson shall, upon request of an employee, assist the employee in filing claims related to alleged work-related injuries subject to the Addendum. The ombudsperson shall receive complaints from employees who have filed claims for Workers' Compensation benefits subject to the Addendum and upon the request of the employee shall assist the employee in attempting to resolve those disputes with the Workers' Compensation insurer of an employer subject to the Addendum.

## ARTICLE II. Commencing Mediation:

Section 3. Provided a dispute has been submitted to the Ombudsman and it has not been resolved within 10 working days, or such period mutually agreed upon between the employee and the employer, mediation may be commenced by either party. When used in any of the mediation and arbitration rules, policies, and procedures, the word "employer" also refers to the employer's workers' compensation insurance carrier. The ombudsman shall sign the "Request for Mediation" certifying that the dispute or issue which is the subject of the Mediation request was presented to the Ombudsman for resolution but the Ombudsman was unable to resolve same.

The Operating Engineers' Workers' Compensation Trust Fund shall appoint a mediator from the list within three (3) working days of receipt of a request for an appointment of a mediator. Mediators shall be appointed on a rotating basis, however, no mediator who is unable to meet with the employee and representative of the insurer within five (5) working days of appointment by the Operating Engineers' Workers' Compensation Trust Fund shall be appointed to mediate that dispute. Upon request by the employee, the ombudsperson shall assist the employee in any mediation proceedings.

The mediator shall contact the employee and a representative of the employer's insurer. Both the employee and employer's insurer shall supply the mediator with requested information. The mediator shall meet separately with the employee and the representative of the insurer. The mediator may schedule a mediation session to be attended by both the employee and the representative of the insurer. If such meeting is scheduled, it shall be conducted at a location selected by the Operating Engineers' Workers' Compensation Trust Fund and said location shall be no more than forty(40) miles from the residence of the employee and within the eleven (11) Southern California counties of California and if no such residence exists, at the offices of the Operating Engineers' Workers' Compensation Trust Fund or within forty (40) miles of the Operating Engineers' Workers' Compensation Trust Fund's offices.

If the dispute is not resolved within fifteen (15) working days of the appointment of the mediator, the mediation process shall be deemed exhausted absent a contrary stipulation between the employee and the representative of the insurer.

In the event the parties mutually object to mediation, the procedures described in this Section shall not apply and the parties may proceed to arbitration under Section 9.

Section 4. Either party may request the Ombudsman to assist in the filing of a request for mediation.

Section 5. The "Request for Mediation" shall be filed with the Trust on the "Request for Mediation" form. A copy of which is attached to these procedures.

Section 6. At the time of filing the "Request for Mediation" the Trust shall serve a copy of the "Request for Mediation" by mail, facsimile transmission, or other means to assure receipt within 3 days upon the other party or parties.

### **ARTICLE III. Processing the "Request for Mediation":**

Section 7. Upon receipt of the "Request for Mediation" the Trust shall:

a. Endorse and date stamp the Request as filed and assign a Trust Mediation number to the case.

b. The appointment of a mediator and the scheduling of mediation activities shall be in accordance with Section 3 of Article II.

### **ARTICLE IV. Mediator:**

Section 8. The Mediator shall take whatever steps the Mediator deems reasonable to bring the dispute to an agreed conclusion within the time allowed for completing the Mediation, including scheduling mediation sessions, implementing means to discuss the dispute with the parties individually or collectively, requiring a party or parties to provide additional documentation or information, appointing -issue.

Within ten days of completion of the Mediation, the Mediator shall file with the Trust the "Mediator's Statement of Completion and Result" and serve a copy of same on the parties and the ombudsman.

### **ARTICLE V. Arbitration:**

Section 9. Within sixty (60) calendar days following the filing of the "Mediator's Statement of Completion and Result" any party not satisfied with the outcome of Mediation may file with the Trust a request that the matter be referred to Arbitration. Failure to timely file the request for referral to arbitration of the disputed issue or issues submitted to the Mediator shall bar any further right to adjudicate such disputed issue or issues. The time for filing the request for arbitration may be extended upon a showing of good cause filed in writing with the Trust and approved by an Arbitrator.

If a dispute related to a claim has not been resolved pursuant to Article IV, the worker or representative of the insurer may request the Operating Engineers' Workers' Compensation Trust Fund to appoint an arbiter from the list to arbitrate the dispute. Absent extraordinary circumstances, arbitration must be requested no later than 60 days after the mediation process involving the same dispute has been exhausted or the date the parties have mutually objected to mediation.

The Operating Engineers' Workers' Compensation Trust Fund shall appoint an arbiter from the list within three (3) working days of receipt of a request. Arbiters shall be appointed on a rotating basis, however, no arbiter who is unable to arbitrate the dispute within 20 working days of appointment shall be appointed to arbitrate that dispute absent a contrary stipulation between the employee and representative of the insurer. The employee and representative of the insurer may jointly request appointment of a specific Arbiter from the panel of arbitrators. Upon request by the employee, the ombudsperson shall assist the employee in the arbitration. An employee receiving assistance from an ombudsperson but is not represented in the arbitration proceeding by an attorney, shall be considered by the arbiter to be an "Unrepresented worker".

Upon receipt of notice of acceptance of the assignment from the Arbitrator to the Trust, the Trust shall promptly consult with the parties. If the parties are not both prepared to arbitrate the dispute within twenty (20) days the Trust shall allow them thirty (30) days to retain and/or consult with legal counsel. The Trust shall set the date of hearing and give notice of the date, time and place of hearing to the parties, which except as set forth below shall not be more than sixty (60) days from the date of the Arbitrator accepts assignments. Notwithstanding the foregoing a hearing date may be set at any time if agreed upon by the parties and approved by the Arbitrator.

Notice of time and place for hearing shall be given by the Trust by mailing to each party notice thereof at least twenty calendar days in advance, unless the parties agree otherwise.

Any party to the hearing may be represented by an attorney. A party intending to be represented by an attorney shall notify the other party or parties and the Trust of the name and address of such attorney not less than 5 days prior to the date set for the hearing at which the attorney is first to appear.

In conducting the arbitration, the arbiter shall apply the same presumptions of compensability, statutory construction and rules of admissibility of evidence that would be applied by a Workers' Compensation Referee conducting a proceeding under the California Labor Code. The arbiter shall have the same authority as a Workers' Compensation Referee over discovery, the production of documents, the issuance of subpoenas and other procedural matters related to the arbitration hearing.

Absent a contrary stipulation between the employee and the representative of the insurer, an arbitration proceeding shall be conducted at a location selected by the Operating Engineers' Workers' Compensation Trust Fund and no more than forty (40) miles from the residence of the employee within the eleven (11) Southern California counties of California and otherwise at the offices of Operating Engineers' Workers' Compensation Trust Fund or within forty (40) miles of the Operating Engineers' Workers' Compensation Trust Fund's offices.

All arbitration proceedings shall be electronically recorded. The original tape and record of the proceeding shall be retained by the Operating Engineers' Workers' Compensation Trust Fund. Copies of the recording and records shall be supplied upon request to the arbiter, employee or representative of the insurer.

Within ten (10) working days following the conclusion of the arbitration, the arbiter shall issue his or her written findings of fact, decision, order and, if applicable, award. The arbiter's decision shall include minutes of the arbitration ; a summary of the oral testimony, if any; and the reasons for the decision. The arbiter is authorized to include in any award all relief available from a Workers' Compensation Referee including, but not limited to, enhancements to compensation due to any unreasonable delay in the payment of compensation by the insurer as provided for by law, and attorney's fees and costs. The cost of dispute resolution process contained in this Addendum may be assessed against the insurer (or the self-insured), including the arbiter's fees, pursuant to the guidelines established by the parties to this Addendum. The arbiter is authorized to resolve all liens not settled by the parties, provided that written notice of the time and place of the arbitration is given to all lien holders advising them of their right to appear and present argument and testimony in support of their lien claims.

Any findings of fact, award, order or decision of the arbiter shall have the same force and effect as findings of fact, an award, order or decision of a California Workers' Compensation Referee.

The decision of the arbiter shall be subject to review pursuant to California Labor Code Section 3201.5(a)(1) by the California Workers' Compensation Appeals Board in the same manner as provided for reconsideration of a final order, decision or award made and filed by the Workers' Compensation Referee and by the California Court of Appeal pursuant to the procedures set forth in California Labor Code Section 3201.5(a)(1).

The Arbitrator or Arbitrators (hereinafter referred to as "the Arbitrator") approved by the Trustees of the Operating Engineers Workers' Compensation Trust is or are vested with full power and authority and jurisdiction to try and determine finally all the matters specified in Section 53 00 of the California Labor Code, subject only to the review by the Workers' Compensation Appeals Board of the State of California and the courts specified in Division 4 of the California Labor Code as having powers of review of determinations of the appeals board. The Arbitrator shall apply California law, both decisions and statutory, under the authority of California Labor Code Section 3201.5, in rendering his or her decision. The rules of Arbitration herein are in lieu of the rules of the American Arbitration Association.

**Section 10.** All orders, rules, findings, decisions, and awards of the Arbitrator shall be prima facie lawful and conclusively presumed to be reasonable and lawful, until and unless they are modified or set aside by the appeals board or upon a review by the courts within the time and in the manner specified in Division 4 of the California Labor Code.

**Section 11.** There is but one cause of action for each injury coming within the Operating Engineers Workers' Compensation Alternative Dispute Resolution program (hereinafter "the Program" except for continuous trauma cases). All claims brought for medical expenses disability payments, death benefits, burial expense, liens, or any other matter arising out of such injury may, in the discretion of the Arbitrator, be joined in the same proceeding at any time provided, however, that no injury, whether specific or cumulative, shall, for any purpose whatsoever, merge into or form a part of another injury; nor shall an award based on a cumulative injury include disability caused by any specific injury or by any other cumulative injury causing or contributing to the existing disability need for medical treatment or death. Notwithstanding the foregoing, the rule established in the case of Wilkinson v WCAB (1977) 19 C3d 491, 138 CR 696, 42 CCC 406, shall govern combining permanent disabilities that become permanent and stationary at the same time.

If a continuous trauma claim is filed, which trauma falls completely within the *ADR* coverage period, but involving more than one *ADR* employer, then the Arbitrator shall have the authority to resolve the entire matter under the jurisdiction of the *ADR* process. A Finding and Award, Stipulated Findings and Award or Compromise and Release will be approved by the Arbitrator, assigning liability for benefits based on his determination of the respective exposure of the parties defendant.

If a continuous trauma claim is filed where the coverage period is partly within the *ADR* coverage and partly without said period, the Ombudsman shall advise the injured worker that part of the period of his injurious exposure falls under the WCAB jurisdiction and that he needs to file an application with the Board naming the non-*ADR* carrier as a defendant. If the *ADR* carrier is the "tail" carrier then this carrier shall provide the appropriate benefits, and shall seek contribution through the WCAB. The carriers shall be left to their own device to resolve contribution, but nothing shall permit the *ADR* carrier to deny or delay benefits to the injured worker.

**Section 12.** The Arbitrator has jurisdiction over any controversy relating to or arising out of medical and hospital treatment as between the parties and the providers.

**Section 13.** The Arbitrator has jurisdiction over all controversies arising out of injuries suffered without the territorial limits of California in those cases where the contract of hire was made in this state. Any such employee or his dependents shall be entitled to the compensation or death benefits provided by the Program.

**Section 14.** The death of an employer subsequent to the sustaining of any injury by an employee shall not impair the right of the employee to proceed within the Program against the estate of the employer, and the failure of the employee or his dependents to cause the claim to be presented to the executor or administrator of the estate shall in no way bar or suspend such right.

Section 15. The Arbitrator may appoint a trustee or guardian ad litem to appear for and represent any minor or incompetent upon the terms and conditions which he or she deems proper.

Section 16. The Arbitrator may provide for the joinder in the same proceeding of all persons interested therein, whether as employer, insurer, employee, dependent, creditor, service provider or otherwise.

#### ARTICLE VI. Settlements:

Section 17. Any case may be settled upon submission of the proposed settlement to the Trust. The proposed settlement shall be set forth either upon the forms approved by the Trust and entitled "Compromise & Release Agreement" or "Stipulation with Request for Award." Upon receipt of a fully executed proposed settlement, the Trust shall forward same to an Arbitrator for review for adequacy and approval.

Section 18. Upon receipt of a proposed settlement, the Arbitrator shall act independently and, in issuing orders or awards, shall either:

- a. Approve the proposal as submitted and issue an appropriate order or award and serve same on the parties and the Trust;
- b. Reject the proposal and specify the reasons therefor in writing and serve same on the parties and the Trust; or
- c. Contact the parties by telephone or writing and suggest amendments that would qualify the proposal for approval. A new Arbitrator shall be appointed if a settlement is not accomplished and the fees for the new Arbitrator shall be paid for by the insurance carrier or the self-insured.

If the Arbitrator elects to proceed under subsection "c" above, the parties shall have 5 working days to notify the Arbitrator of his, its, or her acceptance or rejection of the suggested amendments. If accepted, the Arbitrator shall hold the file for not more than 20 working days for receipt of the appropriately amended agreement. If rejected, the Arbitrator shall immediately return the file to the Trust and advise the parties and the Trust in writing that the proposed settlement was unacceptable and state the reasons therefore.

#### ARTICLE VII. Hearing:

Section 19. It shall be the responsibility of any party producing a witness requiring an interpreter to arrange for the presence of a qualified interpreter as such is defined in California Labor Code Section 5811(b) and fees shall be allowed in accordance with said Labor Code section.

**Section 20.** The Arbitrator shall maintain the privacy of the hearing unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend the hearing. The Arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the Arbitrator to determine the propriety of the attendance of any other person.

**Section 21.** The Arbitrator may, for good cause, postpone the hearing upon the request of a party or upon the arbitrator's own initiative, and shall grant such postponement when all of the parties agree thereto.

**Section 22.** Before proceedings with the first hearing the Arbitrator shall take an oath of office. The Arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if required by law or requested by either party, shall do so.

**Section 23.** Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or counsel who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party. The Arbitrator shall require the party who is present to submit such evidence as is deemed necessary for the making of an award.

**Section 24. Order of Proceedings:**

a. The hearing shall be opened by the filing of the oath of the Arbitrator, by the recording of the place, time and date of the hearing and the presence of the Arbitrator, the parties, and counsel, if any; and by the receipt by the Arbitrator of the statement of the claim and answer, if any.

b. The Arbitrator may at the beginning of the hearing, ask for the statements clarifying the issues involved. The claimant shall then present its claims, proofs, and witnesses, who shall submit to questions or other examination. The Arbitrator has discretion to vary this procedure but shall afford full and equal opportunity to the parties for the presentation of any material or relevant proofs. The Arbitrator shall fully develop the record.

c. Exhibits, when offered by either party may be received in evidence by the Arbitrator.

d. The name and addresses of all witnesses and exhibits in the order received shall be made part of the record.

e. The parties may, by written agreement, provide for the waiver of oral hearings.

## Section 25. Evidence:

a. The parties may offer such evidence as is relevant and material to the dispute and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the dispute. The Arbitrator is authorized to subpoena witnesses or documents and may do so upon the request of any party or independently.

b. The Arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. Notwithstanding the foregoing the parties agree that no evidence is to be admitted into evidence by the arbitrator that is not admissible in an action before the Workers' Compensation Appeals Board not subject to the *ADR* process. All of the evidence shall be taken in the presence of the Arbitrator and all of the parties, except where any of the parties is absent in default or waives the right to be present.

c. Any party intending to offer any medical report or record at the hearing must provide the other party with a copy at least twenty days in advance thereof, unless the Arbitrator finds good cause for failure to do so.

d. The Arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the Arbitrator deems it entitled to after consideration of any objection made to its admission.

e. If the parties agree or the Arbitrator directs that documents are to be submitted to the Arbitrator after the hearing, they shall be filed with the Trust for transmission to the Arbitrator. The filing party shall serve the other party or parties with copies of same at the time of filing.

f. The Arbitrator may in his or her sole discretions appoint an authorized health care professional to assist in the resolution of any medical issue.

**Section 26.** Unless the parties otherwise agree, the arbitration proceeding shall be completed within 30 days after the first hearing which is deemed to be the date of referral. The Arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard.

Upon receiving negative replies, or if satisfied that the record is complete, the Arbitrator shall declare the hearing closed and submitted for decision and such closing and submission shall be made a part of the record of proceedings. If briefs are to be filed, the hearing shall be declared to be closed and submitted as of the final date set by the Arbitrator for the receipt of briefs. If post-hearing filing of evidentiary documents is allowed by the Arbitrator and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing and submission for decision. The time limit within which the Arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearing and submission for decision.

Section 27. The hearing may be reopened by the Arbitrator at his or her discretion, or for good cause upon the application of any party at any time before the Arbitrator files his or her decision and award.

#### ARTICLE VIII. Findings and Awards.

Section 28. All awards of the Arbitrator either for payment of compensation or for the payment of death benefits, shall carry interest at the same rate as judgments in civil actions on all due and unpaid payments from the date of the making and filing of said award. Such interest shall run from the date of making and filing of an award. As to amounts which by the terms of the award subsequently become due in installments or otherwise, such interest shall run from the date each such amount becomes due and payable.

Section 29. The Arbitrator in his or her award may fix and determine the total amount of compensation to be paid and specify the manner of payment, or may fix and determine the weekly disability payment to be made and order payment thereof during the continuance of disability.

Section 30. The Program has continuing jurisdiction over all orders, decisions, and awards made and entered under its authority and pursuant to the provisions of California Labor Code Section 3201.5. At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the Arbitrator may rescind, alter, or amend any order, decision or award, good cause appearing therefor. This power includes the right to review, grant or re-grant, diminish, increase, or terminate, within the limits prescribed for workers' compensation judges or referees by Division 4 of the California Labor Code, any compensation awarded, upon the grounds that the disability of the person in whose favor the award was made has either recurred, increased, diminished, or terminated.

Section 31. The certified copy of the findings and order, decision, or award of the Arbitrator as filed with the Trust and a copy of the judgment constitute the judgment-roll of the Trust. The pleading, all orders of the Arbitrator, Arbitrator's original findings and order, decision, or award, and all other papers and documents filed in the cause shall remain on file in the Office of the Trust.

Section 32. The Arbitrator shall have the same authority as workers' compensation referees with respect to all Sections of the Labor Code including, but not limited to, those relating to bad faith actions or tactics, liability for additional expenses, and unreasonable delay or refusal of payment of compensation.

Section 33. Every order, decision or award, other than an order merely appointing a trustee or guardian, shall contain a determination of all issues presented for determination by the Arbitrator prior thereto and not theretofore determined. Any issue not so determined will be deemed decided adversely to the party in whose interest such issue was raised.

Section 33.a Nothing in this alternative dispute resolution process shall prevent an employee from retaining an attorney to represent the employee in any and all stages of the alternative dispute resolution process established by this Addendum. Such retention of an attorney is the sole and absolute choice of the employee. In no event shall the Operating Engineers' Workers' Compensation Trust Fund be liable for the expense of such representation. The terms and conditions of any agreement between an employee and the employee's retained counsel are not subject to this Addendum nor does this Addendum in any fashion alter or replace any or all California law application to an agreement between an attorney and a worker pursuing Workers' Compensation benefits.

Section 34. The Arbitrator shall make a finding as to which party is the prevailing party in the arbitration proceeding. If the employee is found to be the prevailing party the Arbitrator shall set the attorney's fee as a percentage of the permanent disability award and order the attorney's fee to be paid by the employer. If the employee is not found to be the prevailing party, the Arbitrator shall set the attorney's fee as a reasonable percentage of the permanent disability award and order the attorney's fee to be withheld from the employee's compensation and paid to the employee's attorney.

Section 35. The employee and the attorney may agree to a fee in excess of 12%, provided the attorney submits evidence, including a copy of a written fee agreement between the employee and the attorney, and itemization of personal time involved in activities relating to advancing the employee's cause, which shall include good faith settlement efforts, to the Arbitrator justifying such fee, and the Arbitrator makes specific findings of fact to support an order granting such excess fee.

#### **ARTICLE IX. Medical Examinations.**

Section 36. The Union and employers have jointly approved the Qualified Medical Evaluators listed on Attachment "\_\_\_" hereto. Additional qualified medical evaluators may be subsequently selected by the Operating Engineers' Workers' Compensation Trust Fund. They shall serve as exclusive source of comprehensive medical-legal evaluations, other than those received from treating physicians, to be obtain by employees covered by this Addendum and the insurers of the employers who are parties to this Addendum as to claims for Workers' Compensation benefits which are subject to this Addendum. Any Qualified Medical Evaluator who does not continue to

be a Qualified Medical Evaluator within the meaning of California Labor Code Section 139.2 shall be deleted from the pool of Qualified Medical Evaluators upon loss of status as a Qualified Medical Evaluator under California Labor Code Section 139.2

**Section 37.** All notices of denial of claims and all notices required under the California Labor Code which require advice of an employee's right to a comprehensive medical-legal evaluation shall include a list of the Qualified Medical Evaluator panel including the addresses and telephone numbers of panel members. The notice shall include a copy of Section 36, 37, 38, 39, 40, 41 and 42 of this Addendum.

**Section 38.** If the employee is not represented by an attorney and is entitled to a comprehensive medical-legal evaluation under the standards of California Labor Code Sections 4060, 4061, or 4062 and all related sections of the California Labor Code, the employees may obtain one comprehensive medical legal evaluation from any one Qualified Medical Evaluator included in the panel. The Qualified Medical Evaluator selected by the employee shall consult with any Qualified Medical Evaluator of his or her choice if the opinion of the Qualified Medical Evaluator such consultation is necessary for a complete comprehensive medical-legal evaluation. In cases subject to California Labor Code Section 4061 and 4062 involving unrepresented employees, the reports and testimony of the treating physician or physicians and the comprehensive medical-legal evaluation obtained by the employee from a panel member and the panel member's testimony shall be the only admissible medical evidence in a proceeding before the arbiter.

In cases subject to the California Labor Code Section 4060 involving unrepresented employees, the insurer of the employer may also obtain a comprehensive medical-legal evaluation from any Qualified Medical Evaluator included in the panel. In such cases, the Qualified Medical Evaluator selected by the insurer shall consult with any Qualified Medical Evaluator of his or her choice in the opinion of the Qualified Medical Evaluator such consultation is necessary for a complete comprehensive medical-legal evaluation.

In cases subject to the California Labor Code Section 4060 involving unrepresented employees, the reports and testimony of the treating physician or physicians, the comprehensive medical-legal evaluations obtained by the parties from panel members and the testimony of those panel members shall be the only medical evidence admissible in a proceeding before the Arbitrator.

In cases subject to California Labor Code Section 4060 involving unrepresented employees, the reports and testimony of the treating physician or physicians, the comprehensive medical-legal evaluation obtained by the insurer from a panel member and the testimony of those panel members shall be the only medical evidence admissible in a proceeding before the arbiter.

Notwithstanding any other provision of this Addendum, no physician who has been involved in the treatment of the employee may act as a Qualified

Medical Evaluator in the employee's case.

Section 39. If the employee is represented by an attorney and is entitled to a comprehensive medical-legal evaluation under the standards of California Labor Code Sections 4060, 4061 or 4062 and all related sections of the California Labor Code, neither the employee nor the insurer of the employer shall obtain any comprehensive medical-legal evaluation, other than that of a treating physician or physicians, prior to the expiration of a ten (10) working day period during which the employee and insurer shall attempt to agree upon a single Qualified Medical Evaluator. In such cases, the parties to the dispute may agree upon a Qualified Medical Evaluator who is or is not included on the panel of Qualified Medical Evaluators established by the parties to this Addendum. If agreement on a Qualified Medical Evaluator is not reached within the ten (10) working day period, the employee and insurer then may each select a Qualified Medical Evaluator from the panel of Qualified Medical Evaluators. The Agreed Medical Evaluator or Qualified Medical Evaluators selected shall prepare comprehensive medical-legal evaluations and shall consult with any Qualified Medical Evaluator of their respective choice if in the opinion of any Evaluator such consultation is necessary for a complete comprehensive medical-legal evaluation. In cases involving employees represented by attorneys, the reports and testimony of the treating physician or physicians, the comprehensive medical-legal evaluation obtained pursuant to the foregoing procedure and the testimony of those panel members or Agreed Medical Evaluator shall be the only medical evidence admissible in the proceeding before the arbiter.

Notwithstanding any other provision of this Addendum, no physician who has been involved in the treatment of the employee may act a Qualified Medical Evaluator in the employee's case.

Section 40. Qualified Medical Evaluators on the panel established by the parties to this Addendum shall prepare and complete examinations and comprehensive medical-legal evaluations within the time frames established under applicable regulations of Title 8 of the California Code of Regulations. Each comprehensive medical-legal evaluation shall address all contested medical issues in dispute at the time the evaluation is prepared.

Section 41. An employee who obtains a qualified medical-legal evaluation while not represented by an attorney shall not be entitled to any additional comprehensive medical-legal evaluation merely due to the fact that the employee subsequently retains an attorney.

Section 42. In accord with California Labor Code Section 4064, the employer, through the insurer, shall be liable for the cost of each reasonable and necessary comprehensive medical-legal evaluation obtained by the employee pursuant to this

Addendum. The employer shall not be liable for the cost of any comprehensive medical-legal evaluation obtained by its employee other than those authorized pursuant to this Addendum. In no event shall the employer be liable for any comprehensive medical-legal evaluation performed by other than the treating physician or physicians, either in whole or in part, prior to the employee's filing of a claim form and prior to the time the claim is denied or becomes presumptively compensable under California Labor Code Section 5402. Nothing in this Addendum prevents the employer, insurer or employee from obtaining any additional comprehensive medical-legal evaluation or consultation at the employer's, insurer's or employee's own expense, but in no event shall such additional comprehensive medical-legal evaluations or consultations be admissible in a proceeding before the arbiter under this Addendum.

THE UNDERSIGNED TRUSTEES OF THE WORKERS' COMPENSATION TRUST ALTERNATIVE DISPUTE PROGRAM ACKNOWLEDGES THAT THEY HAVE READ THE ABOVE ENTITLED DOCUMENT AND APPROVE THE TERMS AND CONDITIONS THEREIN BY WHICH THE ADR PROGRAM SHALL BE CONDUCTED.

UNION TRUSTEE

Robert A. Burns  
Misty J. Adams  
Steve G. Bullock

EMPLOYER TRUSTEES

Charles H. [Signature]  
Charles H. [Signature]  
John H. [Signature]

## SAFETY COMMITTEE RESOLUTION

**Be it resolved that the International Union of Operating Engineers ("IUOE"), Local 12 and the Affiliated Contractor Associations hereby establish a Safety Committee made up of the following members:**

**IUOE, Local 12 and Affiliated Contractor Association Workers' Compensation ADR Trustees.**

**The Safety Committee shall consist of Four Trustees, composed of not less than two management and two union trustees.**

**The role of the Safety Committee will be to provide safety and loss control guidance to the members by working with our insurance carrier in the following areas:**

- 1. Review of all open claims to identify trends in causes of loss.**
- 2. Review critical loss control and safety issues affecting members.**
- 3. Invite outside resources to enhance current safety programs available to all members.**
- 4. Prepare and send to each member topical items of specific interest.**

**Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2002, at \_\_\_\_\_, California.**

### ASSOCIATIONS

**Associated General Contractors of California, Inc.**

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

**Engineering Contractors' Association, Inc.**

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

**International Union of Operating Engineers,  
Local 12**

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

**Building Industry Association of Southern California, Inc.**

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

**Southern California Contractors' Association, Inc.**

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

**INTERNATIONAL UNION OF OPERATING ENGINEERS  
LOCAL 12 WORKERS' COMPENSATION TRUST**

**ALTERNATIVE DISPUTE RESOLUTION SYSTEM  
Pursuant to California Labor Code §3201.5**

**MEMORANDUM OF UNDERSTANDING**

In signing this Memorandum of Understanding (MOU), the undersigned firm hereby agrees to be bound by all terms and provisions of the Agreement of the Workers' Compensation Alternative Dispute Resolution Procedure (hereinafter "Workers' Compensation Agreement") between LOCAL 12 OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS and the signatory Contractors' Associations. This MOU shall become effective on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. It will remain in effect until the earlier of the termination of this MOU or of the Workers' Compensation Agreement, in the manner provided by the Workers' Compensation Agreement.

The undersigned firm agrees to be bound by the terms of the International Union of Operating Engineers Local 12 Workers' Compensation Trust Agreement and Funding Agreement. The undersigned firm also understands that it will only be entitled to participate in this program as long as it is signatory to the appropriate labor agreement.

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Firm Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
FAX No.: \_\_\_\_\_  
Contractor's License: \_\_\_\_\_

Insurance Co.: \_\_\_\_\_  
Policy #/Effective Date: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
(Employee, broker, other?)

## **QUALIFIED MEDICAL EXAMINERS**

- 1. Those physicians appointed by, and in good standing with, the Industrial Medical Council of the State of California (IMC), as qualified medical evaluators (QMEs) and as agreed medical evaluators (AMEs) may be selected for the purpose of evaluating medical issues. This list can be modified at any time by mutual agreement of the parties.**