

AGREEMENT AND DECLARATION OF TRUST

ESTABLISHING THE OPERATING ENGINEERS'

HEALTH AND WELFARE FUND

Reprinted July, 1990



**AGREEMENT AND DECLARATION OF TRUST ESTABLISHING
THE OPERATING ENGINEERS' HEALTH AND WELFARE FUND**

This Agreement and Declaration of Trust is made and entered into in the County of Los Angeles, State of California, upon the considerations hereinafter set forth, by and between the following parties:

Employer Associations:

1. Southern California Chapter of the Associated General Contractors of America, for and on behalf of the Association and its members set forth in list attached hereto.
2. Home Builders Institute, Inc., for and on behalf of the Association and its members set forth in list attached hereto.
3. Excavating and Grading Contractors, Inc., for and on behalf of the Association and its members set forth in list attached hereto.
4. Building Contractors Association of California, Inc., for and on behalf of the Association and its members set forth in list attached hereto.

Union:

Local Union No. 12, International Union of Operating Engineers, A. F. of L.

Original Trustees:

George M. Pardee, Jr.	R. W. Spicer
D. W. Asher	Leo J. Volk
George Bingham	R. B. Bronson
Duncan Campbell	
H. M. McNeel	
James J. Twombly	
B. Lee Turner	

**ARTICLE I
TRUSTORS**

The parties to the Trust Agreement recognize as Trustors to this Agreement and Declaration of Trust, the following: Associated General Contractors of California, Inc., as successor to Associated General Contractors of America, Southern California Chapter; Building Industry Association of California, Inc., as successor to Building Contractors Association of California, Inc., and Home Builders Association of Los Angeles, Orange and Ventura Counties; Engineering Contractors' Association, Inc., as successor to Engineering and Grading Contractors Association, Inc.; Southern California Contractors Association, Inc.; Associated General Contractors of America, San Diego Chapter, Inc., as successor to Associated General Contractors of America, San Diego Chapter; San Diego Building Contractors Association; and, Engineering and General Contractors Association, as successor to Engineering and Grading Contractors Association, Inc., San Diego Chapter. The parties to the Trust Agreement further recognize as Trustor the International Union of Operating Engineers, Local Union No. 12. As amended January 1, 1979.

**ARTICLE II
REASONS FOR AGREEMENT**

1. The Union and the Employers have entered into a collective bargaining agreement which provides, among other things, for the establishment of a Health and Welfare Fund.

2. The Union and Employers desire to establish a Health and Welfare Fund as a Trust Fund for receiving contributions and to provide benefits for eligible employees.

3. The Union and Employers desire to set forth the terms and conditions under which the said Fund is to be established and administered; and to set forth the powers and duties of the Trustees and nature of the benefits to be provided; and to set forth their agreement respecting such other matters as are pertinent to the Health and Welfare Plan.

**ARTICLE III
DEFINITIONS**

Unless the context or subject matter otherwise requires, the following definitions shall govern this agreement:

Section 1. **Collective Bargaining Agreement.** The term "collective bargaining agreement" includes (a) Master Labor Agreement Between Southern California General Contractors and The International Union of Operating Engineers, Local No. 12, negotiated by the Joint Negotiating Committee of the Employers Associations and the Union named in Article I above, the effective date of which agreement is May 1, 1954; and (b) any other collective bargaining agreement between the Union, and any Employer organization or individual Employer which provides for the making of Employer contributions to the Fund; and (c) any extension or renewal of any of said agreements which provides for the making of Employer contributions to the Fund; by whatever name such agreement shall be known.

Section 2. **Employer Associations.** The phrase "Employer Associations" shall mean and include only those Associations listed in Article I of this Agreement.

Section 3. **Employer.** The term "Employer" as used herein shall mean and include (a) The Employer Associations named in Article I, their present and future members who become parties to this agreement in the manner provided; (b) any other employer, whether individual, firm or corporation, who is required by any of the collective bargaining agreements to make contributions to the Fund; and (c) any other employer, whether individual, firm or corporation, who becomes a party to this agreement in the manner set forth herein and who does in fact make one or more contributions to the Fund.

It is understood that the Union, party to this Agreement, may be considered an Employer hereunder, if permitted by law or governmental regulation to be so considered, with respect to employees directly employed by such Union in its own affairs; provided, however, that the Union shall be considered as an Employer hereunder, in such event, for the sole purpose of being able to include its employees as beneficiaries of this Health and Welfare Plan, and shall not be considered as an Employer for purposes of the obligations and rights reserved to Employers otherwise defined herein.

The term "Employer" shall also be deemed to include an AFL-CIO Building Trades Council, as to any employee who was immediately preceding his employment with the Building Trades Council, a member of or in the employ of International Union of Operating Engineers Local Union 12 or in the employ of a contributing Employer and, in either case, covered by the Plan. The

ARTICLE IV CREATION OF TRUST

Building Trades Council, shall be required to notify the Trustees in writing of its request to participate, and the Board of Trustees of this Trust shall have the power to approve or deny the request. Such Building Trades Council shall be considered as an Employer for the sole purpose of being able to include such employees as beneficiaries of this Plan and shall not be considered as an Employer for purposes of the obligations and rights reserved to Employers otherwise defined herein.*

Section 4. Employee. The term "employee" means and includes (a) an individual working for or in the employment status with an Employer who is one of the Employer parties, hereto, provided such individual is a member of a bargaining unit represented by the Union as defined herein; (b) an employee of the Union if the Union elects to include its employees as beneficiaries of this plan and notified the Trustees in writing of its election; and (c) office, sales, administrative, executive, supervisory or other employees of an Employer who are not members of the bargaining unit, if the employer so elects to include such employees as beneficiaries of this plan and notifies the Trustees in writing of such election, subject to approval and acceptance by the Trustees, (d) any employee of an AFL-CIO Building Trades Council who was a member or in the employ of International Union of Operating Engineers, Local Union No. 12, or in the employ of a contributing employer and, in either case, covered by the Plan, immediately preceding his employment with the Building Trades Council, under the conditions described in Article III §3 of this Trust Agreement.*

When reference is made herein to the benefits to be provided for an employee, such reference shall also include benefits for the families and dependents of employees, if the Trustees shall elect to include such coverage. As amended June 27, 1956.

Section 5. Union. The term "Union" means Local Union No. 12 International Union of Operating Engineers A. F. of L.

Section 6. Fund. The term "Fund" means the trust fund created and established by this agreement. The trust fund shall include all contributions from Employers, interest, income or return thereon, all insurance policies, including premium dividends, refunds, and all other sums payable by or to the Trustees on account of such policies, and any other money or property of any kind or character received and held by the Trustees, from any source whatever, for the uses and purposes of the Trusts set forth in this agreement.

Section 7. Trustees. The term "Trustee" means any natural person as Trustee pursuant to Article V hereof.* As amended January 28, 1963.

Section 8. Plan. The term "Plan" or "Plans" as used herein shall mean the Operating Engineers' Health and Welfare Fund established by the Employers and the Union pursuant to collective bargaining agreement, and made effective by this Trust Agreement, and any amendments to or modifications of said Plan pursuant to such agreements; and the program of benefits arranged by the Trustees pursuant to this Agreement.

Section 1. Establishment of Fund. There is hereby established the Operating Engineers' Health and Welfare Fund, to be used for the purposes set forth in this Agreement and Declaration of Trust. The Trustees and their successors declare that they will receive and hold the contributions herein provided for and for any other money or property which may be entrusted to them as Trustees hereunder, with the powers and duties and for the uses, purposes, and Trusts herein named for none other.

Section 2. Purpose. This Trust is established for the purpose of establishing and administering a Health and Welfare Plan providing any or all of the following insurance benefits: life insurance, health insurance, accident insurance hospital benefits, surgical benefits, medical benefits, and other similar insurance and benefits as the Trustees shall determine. It is not intended or contemplated that this Trust shall be used to provide benefits for disabilities for which Workmen's Compensation is paid, or payable, or for retirement pay, pensions, annuities or unemployment benefits.

Section 3. Nature of Fund. The Fund shall consist of all contributions required hereunder to be made for the establishment and maintenance of the Health and Welfare Plan or Plans, and all interest, income and other returns thereon of any kind whatsoever; and shall continue an irrevocable trust to provide health and welfare benefits to be furnished in accordance with the provisions of this Agreement.

Section 4. Location of Fund. The Fund shall have its principal office in the City of Los Angeles, State of California.

Section 5. Rights of Parties. The rights and duties of all parties, including the Employers, the Unions, the employees and the Trustees, shall be governed by the provisions of this agreement and any insurance policies or contracts procured or executed pursuant to this agreement.

ARTICLE V TRUSTEES

Section 1. Number. The Fund and Plan shall be administered by a Board of Trustees consisting of sixteen Trustees, eight (8) of whom shall be designated "Employer Trustees" and eight (8) of whom shall be designated "Union Trustees." As amended July 1, 1986.

After July 15, 1969, in the event that any signatory employer association party to this Trust Agreement merges or amalgamates with another signatory employer association party to this Trust Agreement and one entity remains, the number of employer trustees serving on this Trust shall be reduced by one Trustee and the number of Union Trustees serving on this Trust shall be reduced by one Trustee.

In no event shall the number of trustees be reduced below six trustees, three of whom shall be designated "Employer Trustees" and three of whom shall be designated "Union Trustees."*

*Ratified Oct. 6, 1970

*Ratified Oct. 6, 1970

Section 2. (a) **Appointment.** Each individual Employer, present or future party to this Agreement, whether or not a member of any such Association, hereby irrevocably designates such Associations as his or its attorney in fact for the purposes of appointing and removing Trustees and successor Trustees, and for the purpose of executing other powers granted hereunder to such Associations, and grants to such Associations the sole and exclusive right to make such appointments and removals, and to exercise such other powers, on behalf of all Employers. As amended January 28, 1963.

(b) The Employer Trustees and their successors, if any, shall be appointed by the respective Signatory Associations, as follows:

(1) Six Trustees shall be appointed by Associated General Contractors of California, Inc., Building Industry Association of California, Inc., Engineering Contractors' Association, Inc., and Southern California Contractors Association, Inc., acting jointly;

(2) One Trustee shall be appointed by Associated General Contractors of America, San Diego Chapter, Inc., San Diego Building Contractors Association, and Engineering and General Contractors Association, acting jointly;

(3) One Trustee shall be appointed by Nevada Chapter, Associated General Contractors of America, Inc. The manner and method of appointment of Employer Trustees shall be determined exclusively by such Employer Associations. As amended July 1, 1986.

(c) The Union Trustees shall be appointed by Local Union No. 12, International Union of Operating Engineers, AFL-CIO. The manner and method of appointment of Union Trustees shall be determined exclusively by the Union. Any union, who, in the future, may become a party to this agreement, hereby irrevocably designates the Union as its attorney in fact for the purposes of appointment and removing Trustees and successor Trustees, and for the purpose of executing other powers granted hereunder to the Union, including specifically, but not exclusively, powers of amendment and powers of termination; and grants to the Union the sole and exclusive right to make such appointments and removals and to exercise such other powers on behalf of it.

(d) Appointment of such Trustees shall be made in writing. The written appointment of Employer Trustees shall be signed by the Employer Associations vested with the right of appointment. The written appointment of Union Trustees shall be signed by the Union.

The names of the Trustees initially appointed are set forth in Article I of this Agreement, and shall constitute their acceptance of office and agreement to act under and be subject to all the terms and conditions of this Agreement.

Section 3. **Terms of Trustees.** Each original Trustee, and such successor Trustee, shall serve until his death, incapacity, resignation or removal, as herein provided. Any retiring Trustee shall forthwith turn over to the remaining Trustees any and all records, books, documents, monies and other property in his possession owned by the Trust or incident to the Administration of the Trust.

Section 4. (a) **Removal of Trustees.** Any Employer Trustee may be removed at will, with or without cause, by the Employer Association which appointed him, by an instrument in writing, signed by that Employer Association and served on the Trustee, the Chairman of the

Board of Trustees and the Union. Any Union Trustee may be removed at will, with or without cause, by the Union, by an instrument in writing signed by the Union and served on the Trustee, the Chairman of the Board of Trustees and the Employer Associations.*

(b) If a Trustee shall be absent either from two (2) consecutive scheduled or called meetings of the Board of Trustees or from two (2) consecutive scheduled or called meetings of any Committee of this Board of which he is a regular member, without it appearing to the Board that there was just cause for such absences, the Board of Trustees may give written notice of that Trustee's failure to attend such meetings to the party or parties which appointed such Trustee. If thereafter within the period of twelve calendar months following the time of the first of such absences the Trustee concerning whom such notice was given, as aforesaid, shall again be absent either from two (2) consecutive scheduled or called meetings of the Board of Trustees or from two (2) of any Committee of this Board of which that Trustee is a regular member, without it appearing to the Board that there was just cause for such absences, the Board of Trustees shall have the right, but shall not be required to request the removal of such Trustee. In such event, upon written notice of the facts by the Board to the party or parties which appointed such Trustee, the party or parties which so appointed him shall remove him from office and shall appoint a successor Trustee forthwith.

(c) Removal of a Trustee shall be made in writing in the same manner as an appointment of a Trustee.*
*As amended January 4, 1962.

Section 5. **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.

Section 6. **Successor Trustees.** Whenever a vacancy shall occur in the Board of Trustees, whether by death, removal, resignation or otherwise, 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 original Trustees; and the successor Trustee shall execute a written acceptance of office of Trustee in the same manner as the original Trustees. Any successor Trustee appointed by and in accordance with the foregoing provisions shall, upon his acceptance of such Trusteeship in writing and filed with the Trustees, become vested with all rights, powers and duties of a Trustee hereunder with like effect as if originally named as a Trustee in this instrument.

Section 7. **Non-Ratification By Association.** The following procedure shall govern in the event any one or more of the Employer Associations who has a right to designate a Trustee shall at any time fail to ratify and sign a Collective Bargaining Agreement between it and International Union of Operating Engineers, Local No. 12, upon completion of negotiations by the respective joint Contractor Negotiating Committees. These provisions shall supersede any contrary provisions contained elsewhere in this Agreement; provided, however, nothing in this section will permit an Association to withdraw

*Ratified Oct. 6, 1970

from this Trust Agreement during the term of a Collective Bargaining Agreement which requires any contribution to this fund.*

(a) The term of office of the Trustee or Trustees who are members of such Employer Association or Associations shall immediately terminate and the office of such Trustee on the Board of Trustees shall be deemed vacant; subject, however, to the right of the Board of Trustees to extend such date of termination and vacancy.

(b) Their successors shall be named by the remaining Employer Association or Associations; which Associations shall thereupon be vested with the sole and exclusive powers of appointment and removal of Trustees, and other powers previously vested in all of the original Associations.

(c) Except as otherwise provided above, appointment of successor Trustees shall be in accordance with the provisions of this Article.

Section 8. Trustee Officers. The officers of the Board of Trustees shall be a Chairman and a Secretary-Treasurer who shall be elected annually by the Trustees from among themselves. One officer shall be an Employer Trustee and the other officer shall be a Union Trustee. The officers shall serve for a period of one year and their term of office shall expire on December 31, of each year. Nothing herein shall prohibit any officer or his alternate from being re-elected or succeeding himself.

Notwithstanding any provision of Article V, Section 8 to the contrary, the term of office of the Trustees in office at the time this amendment is adopted shall continue beyond November 30 of that year and shall expire on December 31 of that year. As amended April 2, 1965.

Section 9. Duties of Officers. The Chairman shall be responsible for the conduct of the meeting. The Secretary-Treasurer shall keep minutes or records of all meetings, proceedings and acts of the Trustees; and shall make same available to all Trustees. The Chairman and Secretary-Treasurer shall jointly execute written instruments authorized by the Trustees, and shall jointly sign checks drawn on the Fund. However, the Board of Trustees may designate an alternate for the Chairman and an alternate for the Secretary-Treasurer, which alternate shall be chosen from the same Trustee Group as the officer for whom he serves as alternate. In the event of the absence or disability of such officer, instruments and checks may be signed by his alternate.

Section 10. Quorum. A majority of Trustees, to-wit, six present in person at any meeting shall constitute a quorum for the transaction of business, provided that not less than three Employer Trustees and not less than three Union Trustees shall be present.

Section 11. Meetings.

(a) An annual meeting shall be held each year for the purpose of electing officers for the ensuing year. Date of annual meeting shall be fixed by resolution of the Board of Trustees.

(b) Regular or periodic meetings may be held at such time or times as may be established by resolution of the Trustees.

(c) Special meetings may be called by the Chairman or

Secretary-Treasurer or by any two other Trustees, by giving to each Trustee at least five days written notice of the time and place of such meeting; or may be held without notice if all Trustees consent in writing.

(d) All meetings shall be held in Los Angeles County, California, at such place as shall be designated by resolution of the Trustees.

(e) All Trust and Committee meetings shall consist of the Trustees and/or Committee members only, in addition to the Recording Secretary.

All Trust staff members shall be present at all Trust and Committee meetings only during the portion of the agenda which requires their reporting. On the request of any individual Trustee, however, any staff member shall be admitted into all or any part of any meeting. Nothing stated in this provision shall be intended to exclude the Administrative Manager from attendance at any Trust and/or Committee meeting.*

Section 12. Voting. Unless otherwise provided in this Agreement, all decisions of the Trustees shall be made by the majority vote of the Trustees present at the meeting at which such vote is taken. However, Employer Trustees and Union Trustees shall have the right to cast an equal number of votes whether or not an equal number of Employer and Union Trustees are present. In the event the number of Employer Trustees and Union Trustees at the meeting are not equal, each Trustee of the small group shall be vested with additional voting power in an amount sufficient to equalize the voting power of the two groups. For example, by way of illustration, if there are present at a meeting three Union Trustees and five Employer Trustees, there will be a total voting power of ten votes, five of which shall be vested in the Employer Trustees, one vote each; and five of which shall be vested in the Union Trustees, one and two-thirds votes each.

Section 13. Action Without Meeting. Action by the Trustees may also be taken by them without a meeting provided that such action is evidenced by an instrument in writing to which all of the Trustees shall consent by unanimous written concurrence.

Section 14. Action in Event of Deadlock.

(a) **Application of this Section.** In the event the Trustees cannot act with respect to any question or resolution presented to them for decision, including proposed amendments to this Trust, because of a tie vote, either side may submit said dispute within 48 hours to the American Arbitration Association for a list of seven arbitrators, from which list each side shall immediately within 48 hours alternately strike three names. The remaining arbitrator shall be the impartial chairman. In the event the Trustees fail or refuse to refer said dispute to the American Arbitration Association as stipulated above, said dispute shall within 48 hours be automatically referred to the grievance procedures set forth in the Southern California Master Labor Agreement. Any decision of the Labor-Management Adjustment Board or Arbitrator shall be final and binding on the Trustees.

The cost and expenses incidental to arbitration before the American Arbitration Association shall be a proper charge against the Fund, and the Board of Trustees is

authorized and directed to pay such charges; provided however, that each party shall pay any expenses incurred by it in connection with the dispute.*

(b) **Casting a Vote.** Upon the impartial umpire being so chosen or appointed, a meeting of the Trustees shall be held as soon as practicable, which shall be attended by such umpire, and he shall at such time hear any evidence or arguments presented by either group of Trustees upon the question or resolution upon which such tie vote has occurred, and such umpire, may, if he desires, make any inquiries from the Trustees with respect to any information deemed by him to be competent, relevant, or material to the question, and if such information is not then available, it shall be furnished to such umpire, by the Chairman and the Secretary jointly, as soon as practicable. Such impartial umpire shall then as soon as practicable, and in any case, within fourteen (14) days after the meeting at which such umpire shall have been present and heard the evidence and arguments, by written instrument cast his vote for or against the question or resolution upon which the tie has occurred. Such umpire shall specify in writing his reasons for casting such vote. A copy of such written vote of the umpire shall be delivered by him to the Chairman and to the Secretary of the Trustees. The decision of the impartial umpire shall be final and binding upon the Trustees, the parties and the beneficiaries of this Agreement and the Health and Welfare Plan.

(c) **Limitation of this Section.** No matter in connection with the interpretation or enforcement of any collective bargaining agreement shall be subject to arbitration under this section.

Section 15. Compensation of Trustees. Upon authorization by the Board of Trustees, a Trustee may be paid a fee from the Fund not exceeding one hundred dollars (\$100.00) per meeting of the Board of Trustees or of any Committee of the Board of Trustees of which he has been duly appointed a member as and for compensation for his services as Trustee and, in addition, may be reimbursed for expenses properly and actually incurred in the performance of his duties as Trustee; provided, however, that actual personal attendance at such meetings by such Trustee shall be required as a condition of payment of such compensation. Notwithstanding the foregoing, no Trustee who already receives full-time pay from an Employer or an Employer Association, or the Union, shall receive compensation as hereinabove described, except for reimbursement of expenses properly and actually incurred; provided, however, that this limitation shall not apply until June 30, 1977, as to any Trustee who served in such capacity and received compensation therefor on or before June 30, 1974, and continues in such capacity.

Section 16. Liability of Trustees. The Fund shall protect, indemnify, hold harmless and defend each Trustee from any and every liability, claim and cause of action arising from the affairs of the Fund or his service in the capacity of Trustee to the maximum extent permitted by law; provided, however, that in no event shall the foregoing apply to any Trustee whose wilful misconduct or gross negligence gives rise to the liability, claim or cause of action.

Section 17. Functions, Powers and Duties of Trustees.

(a) **Power of Attorney.** The Employers and the Union irrevocably grant Power of Attorney to the Trustees now in office or subsequently appointed in accordance with the provisions of the aforesaid Agreement and Declaration of Trust to administer said Fund as the representatives of such parties and with full authority to act for the Employers and the Union as their representatives in the administration of said Fund.

(b) **Administration of Fund.** The Board of Trustees shall have the power and duty to administer the Fund and maintain a Health and Welfare Plan for the sole and exclusive benefit of employees, and, at the discretion of Trustees, the families and dependents of employees.

The detailed basis on which health and welfare benefits are to be paid shall be as set forth by the Board in writing and signed by the Chairman and Secretary. The Board may from time to time amend, modify or add to the Health and Welfare Plan, which amendments, modifications or additions shall be set forth in writing and signed by the Chairman and Secretary of the Board.

(c) **Deposit of Monies.** The Trustees shall deposit all monies received by them in such bank or banks as they may select for that purpose, providing the banks are members of the Federal Reserve System. All checks, drafts, vouchers or other withdrawals of funds from the account or accounts of the Trust Fund shall be countersigned by two Trustees, one Employer Trustee and one Union Trustee, who shall be the Chairman and the Secretary-Treasurer or alternates designated for such purpose.

(d) **Fidelity Bonds.** The Trustees shall by resolution duly adopted, provide for fidelity bonds for Trustees and other persons who shall be authorized to receive or withdraw funds from the trust estate. Such bonds shall be placed with a reputable licensed surety company in such amounts as the Trustees shall determine. The cost of the premiums on such bonds shall be paid out of the Fund.

(e) **Investments.** The Trustees shall have the power to invest or reinvest, or cause to be invested and reinvested, the assets of the Fund in such manner as in its judgment may seem beneficial and appropriate for the protection and preservation of the Fund, without being limited or bound by any rule or custom relating to investments by Trustees, except that no investment shall be made in the obligation or property of any Employer nor in any securities of any Employer. As amended October 31, 1961.

(f) **Expenditures.** Any and all funds received by the Trustees in the form of contributions, income, dividends on policies of insurance, interest on bonds or bank deposits, or otherwise, shall be received by them as part of the Fund to be administered and disposed of for the following purposes:

- 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 and Fund, including but without limitation, all expenses which may be incurred in connection with the establishment of the Trust and Fund, the providing of fidelity bonds, the employment of administrative, legal, expert and clerical assistance, the 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 pay or provide for the payment of all premiums on the policy or policies of insurance procured to carry out the purposes of the Fund when such premiums shall become due. Such insurance policies shall be contracted for in the name of and issued to the Trust Fund.
 - C. To establish and accumulate as part of the Fund such reasonable reserves as the Trustees shall determine advisable to carry out the purposes of the Trust.
 - D. In the event the Trustees determine that they are unable to maintain the then existing level of benefits of the Plan without reducing the reserve funds of the Trust below a level of three months premiums, they shall promptly advise the parties to this Agreement and Declaration of Trust of their conclusion and shall certify to said parties to this Agreement and Declaration of Trust of their conclusion and shall certify to said parties their estimate of the rate of contributions which will be sufficient to maintain the then existing level of benefits.*
- (g) **General Powers.** The Board of Trustees shall have the following general powers in addition to such other powers as are set forth herein or conferred by law:
- A. To enter into contracts or procure insurance policies necessary to place in effect and maintain the Health and Welfare Plan, to terminate, modify, or renew any such contracts or policies subject to the provision of the Health and Welfare Plan, and to exercise and claim all rights and benefits, granted to the Board or the Fund by any such contracts or policies. Any such contract shall be executed in the name of the Fund, and any such policy shall be procured in the name of the Fund.
 - B. To employ actuaries, brokers and such other executives, consultant, administrative, clerical, secretarial, accountant and legal personnel and other employees and assistants, as may be necessary in connection with the administration of the Fund and Health and Welfare Plan and to pay or cause to be paid out of the Fund, the compensation for the foregoing and necessary expenses of administration.
 - C. To incur and pay out of the Fund any expense reasonably incidental to the administration of the Fund or the Health and Welfare Plan.
 - D. To pay out of the Fund, reasonable expenses incurred in the establishments of this Trust Instrument, the Fund or the Health and Welfare Plan.
 - E. To compromise, settle or release claims or demands in favor of or against the Fund on such terms and conditions as the Board may deem desirable; provided, however, that except to the extent that the Board may, in a proper case, compromise the money indebtedness to the Fund of any contributor to the Fund, no such compromise, settlement or release by the Board shall affect the rights or obliga-

tions of the parties with respect to any breach of any collective bargaining agreement.

- F. To from time to time adopt rules and regulations for the administration of the Health and Welfare Plan and the Fund, including the establishment of requirements for eligibility to participate in the benefits of the Health and Welfare Plan and the Fund, provided that the detailed regulations under which an employee becomes and remains an eligible employee shall be set forth in writing and signed by the Chairman and Secretary.
 - G. To enter into any and all contracts and agreements for carrying out the terms of this Agreement and Declaration of Trust and for the administration of the Trust Fund and to do all acts as they, in their discretion, may deem necessary or advisable.
 - H. To construe the provisions of this declaration of trust and the terms used herein, to accomplish the general end and purpose of the Trust in providing a practical plan for health and welfare benefits for the employees; and, in so construing the agreement, to disregard form where necessary or practical in order to accomplish the general end and purpose of the Plan.
 - I. To 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.
 - J. To enter into contracts, at their discretion, with third persons, firms or corporations, to perform the administrative and clerical work of the fund; provided that the Trustees shall reserve the right to review any decision reached by such other persons, firms or corporations.
 - K. To co-ordinate its activities in purchase of insurance or in the administration of the Fund and the Health and Welfare Plan with the administrative activities of the boards of Trustees of other Trust funds and health and welfare plans established or to be established to such extent as may be necessary or desirable to minimize costs, eliminate unnecessary book-keeping and other expenses for the individual employers and avoid or eliminate duplicating employer contributions or insurance coverage with relation to the same employee. The foregoing is intended to include the right to enter into reciprocal agreements as to eligibility, but is in no way intended to limit other rights invested in the Trustees by this section. Two-thirds vote of the Trustees pursuant to the provisions of Article V, Section 12, shall be required for such action.
- (h) Consistent with the other provisions of this Trust Agreement, the Board of Trustees shall be governed by and all decisions made shall meet all of the following criteria:
- A. Is there a need?
 - B. Can the Trust Fund afford it?
 - C. Will there be a benefit?
 - D. Is it legal?*
- Section 18. Committees of the Board of Trustees.
- (a) **Delegation of Responsibilities.** The Trustees may

delegate fiduciary responsibilities and administrative duties to committees or subcommittees of the Board of Trustees, and may delegate such responsibilities and duties to other individuals as the Trustees may deem appropriate or necessary in their sole discretion and consistent with applicable law.

(b) **Standing Committee.** The standing committees of the Board of Trustees may consist of a Finance & Investment Committee, a Benefits Committee and a Contributions Committee, and such other standing committees as the Trustees may create by resolution.

(c) **Appointment and Procedure of Committees.** Each committee shall consist of an equal number of Employer Trustees and Union Trustees. A quorum of any committee meeting shall be at least one Employer Trustee and at least one Union Trustee. Voting at committee meetings shall be in accordance with Article V, Section 12. Officers of the Board of Trustees who are Union Trustees shall designate the Union Trustee members of each committee, and officers of the Board of Trustees who are Employer Trustees shall designate Employer Trustee members of each committee. Any appointed member of a committee may be removed from membership in such committee by the officers of the Board of Trustees appointing him at any time without cause.

(d) **Finance & Investment Committee.** The Finance & Investment Committee may review and formulate investment policies, receive and act upon investment advice and legal advice relating to investments, and make appropriate recommendations to the Board of Trustees on any matter relating to investments and investment policies. The Board of Trustees may delegate to the Finance & Investment Committee the authority to authorize and approve the sale and investment of Trust Fund assets as permitted by this Trust Agreement, subject to pertinent investment policies and guidelines adopted by the Board of Trustees.

(e) **Benefits Committee.** The Benefits Committee may formulate rules and procedures relating to benefits. The Benefits Committee may review all applications for benefits with regard to eligibility and amount, and may make appropriate determinations with respect to payment.

(f) **Contributions Committee.** The Contributions Committee may formulate policies and procedures in regard to collection of delinquent payments and contributions due the Fund. The Trustees may delegate to the Contributions Committee the authority to initiate legal actions and to exercise the powers of the Trustees to enforce, compromise or otherwise resolve disputes and claims regarding delinquent employer contributions or other obligations owed to the Trust Fund. The Contributions Committee may act jointly with similar committees of related employee benefit trusts entitled to receive Contributions under the Collective Bargaining Agreement.

ARTICLE VI CONTRIBUTIONS

Section 1. Reports. Contributions shall be paid into the Trust in such a manner and with such reports as the Board of Trustees may prescribe in the amounts obligated by the Collective Bargaining Agreements.

Section 2. Time and Location of Payment. Contribu-

tions shall be paid at the principal office of the Trust in the County of Los Angeles, State of California, in regular and continuing monthly payments subject to the provisions of the Collective Bargaining Agreements. Each monthly payment shall be payable on or before the tenth day of the month following the month in which work was performed and shall include all contributions since the last such payment which have accrued for work performed up to the close of the Individual Employer's payroll period ending nearest to the last day of the preceding calendar month.

Section 3. Breach; Enforcement. The failure of an Individual Employer to pay the contribution required by the Trustees shall constitute a violation of such Individual Employer's obligation to make payment of his required contribution as herein provided and shall not relieve any other Individual Employer of his obligation to make payment of his required contribution. The Trustees may take any lawful action necessary to enforce payment of the contributions due hereunder, including the right to sue such Individual Employer in a court of competent jurisdiction; and the delinquent Employer shall be liable to the Trust for all expenses of collection thereof, including reasonable attorney's fees incurred by the Trustees.

Section 4. Good Faith Deposit; Performance Bond; Weekly Reports.

(a) If an Individual Employer establishes a record of delinquency, the Trustees may, in their own discretion, require of such Individual Employer a good faith deposit or a performance bond with sufficient surety in an amount not more than the maximum amount of delinquent monies owed by said Individual Employer and outstanding at any given date. For the purposes of this section, a record of delinquency shall be failure to pay contributions timely for any three (3) or more months within any twelve (12) consecutive months.

(b) The Trustees may, in their exclusive discretion, require a good faith deposit or a performance bond with sufficient surety from any Individual Employer where the Trustees find that such Individual Employer is composed of one or more persons, firms or corporations who were, or are, principals or stockholders in any other Individual Employer which owes an indebtedness to the Trust on account of unpaid contributions or liquidated damages, or which at any time had a record of delinquency within the meaning of Section 4 (a) of this Article. The amount of such good faith deposit or bond shall be not more than the maximum amount of delinquent contributions owed by said other Individual Employer.

(c) Notwithstanding any contrary provision of Section 2 of this Article VI, the Trustees may, in their exclusive discretion, require an Individual Employer with a record of delinquency to report and pay contributions to the Trust at weekly intervals, or to make weekly deposits with the Trust based upon estimates of hours worked during such week. Such weekly reports and payments or deposits shall be due and payable at the principal office of the Trust in Los Angeles, California, not later than the second business day of the week following the week in which work was performed.

Section 5. Economic Action. Nothing contained herein shall be deemed to authorize or prevent economic action by the Union against any Individual Employer who is delinquent in his contributions to the Trust. All rights of

the Union to refuse to furnish men to any delinquent Individual Employer, or to withdraw employees from the job of any delinquent Individual Employer, or to strike or take other economic action against a delinquent Individual Employer, shall be determined by the provisions of the Collective Bargaining Agreements and by applicable rules of law, and shall not be deemed affected in any way by this Agreement.

Section 6. Audit of Employer Records. Upon request in writing from the Board of Trustees, any Individual Employer shall permit a person or persons selected by the Board to enter upon the premises of such Individual Employer during business hours, at a reasonable time or times, and to examine and copy such books, records, papers or reports of such Individual Employer as may be necessary to determine whether the Individual Employer is making full and prompt payment of all sums required to be paid by him or it to the Trust. Any Individual Employer determined by the audit to be delinquent in sums owed to the Trust shall pay to the Trust, in addition to such delinquent sums, the full amount of auditing costs incurred by the Trust in connection with such delinquency.

Section 7. Records and Information. The Board of Trustees shall maintain suitable and adequate records of and for the administration of the Fund. The Board may require the Employers, any Signatory Association, any Individual Employer, the Union, or any Employee to submit to it any information, data, report or document reasonably relevant to and suitable for the purposes of such administration; provided, however, that the Union shall not be required to submit lists of membership. The parties agree that they will use their best efforts to secure compliance with any reasonable request of the Board for any such information, data, report or documents.

Section 8. Advancement of Premium. Upon the failure of any Employer to make the required contributions when due hereunder, the Trustees shall have the right and power to pay or provide for payment from the Fund of the premiums necessary to provide the benefits hereunder to an eligible or the eligible Employees of such delinquent Employer, but the Trustees shall not be obligated, either to said Employees or said Employer, to make or provide such payments, and Trustees shall incur no liability whatsoever, either individually or collectively, for their failure or refusal to do so. In the event such payments are made by the Trustees from the Fund on behalf of a delinquent Employer, the Fund shall be reimbursed by said Employer for such payments, and the fact that the Trustees may have made such payments shall not alter or diminish the obligations of such Employer or the rights of the Trustees under this Section.

Section 9. Rights in the Fund. Neither the Associations, their members or other Employers, the Union, any Trustee, any employee, any beneficiary of the Health and Welfare Plan, nor any other person shall have any right, title or interest in the Fund other than as specifically provided in this Agreement, and no part of the Fund shall revert to the Associations, their members, or other Employers, the Union, any Trustee, or any employee. Neither the Fund nor any contribution to the Fund shall be in any manner liable for or subject to the debts, contracts, or liabilities of the Associations, their members, or other Employers; the Union, or any employee. No part of

the Fund nor any benefits payable in accordance with the Health and Welfare Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge by any person; provided, however, that the Board of Trustees shall establish a procedure whereby any employee may direct that benefits due him be paid to the doctor, hospital or other person or institution from which he or his dependent received medical, hospital or other services for which such benefits are due.

Contributions to the Fund shall not constitute or be deemed to be wages due to the employees with respect to whose work such payments are made, and no employee shall be entitled to receive any part of the contributions made or required to be made to the Fund in lieu of the benefits provided by the Health and Welfare Plan.

ARTICLE VII BENEFITS

Section 1. Types of Benefits. The Trustees shall provide, either through the purpose of insurance policies or otherwise, as they shall determine, every eligible employee with such of the following benefits as can, in the judgment of the Board of Trustees, be purchased with the funds available after allowance for reasonable administration expenses and a reserve fund as provided for in this agreement, such benefits to be effective as soon as is practically feasible following the establishment of the fund: Death, Dismemberment, Medical expense, Surgical expense, Hospital expense and other expenses incurred in the care and treatment of physical injury or illness and other similar benefits as the Trustees may select.

Section 2. Liability for Benefits. Neither the Union, nor the Employer, nor the Trustees, nor any officer, agent or member of any of them, shall be liable for the benefits herein provided, and all such benefits, referred to in Section 1 above, shall be payable and/or collectible only to the extent and in the manner provided for by the contracts of insurance arranged pursuant to this Agreement, and/or as arranged for by the insurance companies underwriting such insurance contracts. An employee whose claim has been denied, in whole or in part, must look exclusively to the insurance company for satisfaction of his claim and may not bring legal action against any person, firm or corporation except the insurance company.

Section 3. Program of Benefits. The Trustees shall have full authority to determine all questions of nature, amount and duration of benefits to be provided based on what it is estimated the Fund can provide without undue depletion or excessive accumulation; provided, however, that no pension or annuity benefits may be provided for or paid under this Agreement and Declaration of Trust.

Section 4. Eligibility Requirements. The Trustees shall have full authority to determine the requirements with which an individual must comply in order to be eligible for benefits; and shall have full authority, in their discretion, to change such requirements, from time to time, as shall appear to be necessary or proper under the circumstances. Eligibility requirements shall be set forth in writing, signed by the Chairman and Secretary. The Trustees shall have the power to resolve all disputes or

questions as to the eligibility of any individual employee under this Agreement, and any such adjudication shall be binding upon the employer and any dependent of such employee. No Trustee shall be personally liable by reason of any such adjudication.

ARTICLE VIII ADMISSION OF ADDITIONAL EMPLOYERS OR EMPLOYEES

Section 1. **Additional Employers.** The Trustees may admit to membership in this Plan as an Employer under this Agreement and Declaration of Trust, any person, group, company or corporation, if, in the judgment and discretion of the Trustees, such admission to membership will be of benefit to the beneficiaries of the Plan by making possible increased economy or efficiency of operation or administration, or by making possible improvement in the loss experience of the Plan, or if it appears that such membership will result in benefit to the Plan in any other manner. New Employers, other than those contemplated by Section 6 of this Article, admitted to the Plan, should be engaged in building trade activities or other business similar to, allied with or related to the business activities of the original Employers named in this Agreement. All applicants shall agree in writing to be bound by this Trust Declaration and Agreement and shall by such signing agree to be bound by the terms and conditions of this Trust and to make such payments as shall be required by the Trustees consistent with the provisions hereof. The agreement in writing of any additional Employer to be bound by this Trust Declaration or a copy thereof shall be considered and shall constitute a re-execution of this Trust Agreement by all Trustors then participating in this Trust for all purposes. New members of signatory associations shall agree to participate in the Plan upon becoming an association member and shall be admitted to membership in the Plan, as an Employer, upon written notice given by the Associations to the Trustees.

Section 2. **Additional Employees.** The Trustees may, on request of an Employer that all or some severable portion of his employees be allowed the benefits of this Trust Agreement, admit such Employees to the Plan subject to the following terms and conditions: The Employer must file a written application with the Trustees, requesting that his employees who are not members of the bargaining unit represented by the Union be admitted to the Plan and such group may be so admitted by the Trustees, effective the first of the calendar month following the month in which written application is filed.

It is the intention of this provision to allow office employees of the Union and office and other employees of an Employer, not included in the bargaining unit, to become beneficiaries of the Plan. As amended June 27, 1956.

Section 3. **Withdrawal.** An Employer who with the consent of the Trustees enrolls any of his employees under the Plan who are not members of a bargaining unit represented by the Union, pursuant to a collective bargaining agreement with such Employer may withdraw such Employees from the Plan and cease to be liable for contributions on such Employees by giving 15 days written notice to the Trustees prior to the first day of any calendar month.

Section 4. **Trustees Not Affected.** The original signatory Associations and Union to this Agreement shall at all times have the right and power to select and remove the Trustees and their successors under this Agreement and any Employer, or any local union entering this Health and Welfare Plan after the initial effective date must as a condition precedent to his admission acknowledge and agree to be bound by this provision.

Section 5. **Certificate of Acceptance.** If additional local unions or associations or Employers agree to be included within the terms and conditions of this Trust, they shall execute a certificate in such form as the Board of Trustees may require signifying their acceptance of this Trust and the Trustees, and specifying the date on which contributions and benefits hereunder shall commence.

Section 6. **Non-Member Employer.** Any individual Employer who is not a member of or represented by any Employer Association named, or a signatory Association, but who is performing work coming within the jurisdiction of the Union may become a party to this Agreement by executing in writing and depositing with the Board of Trustees his or its acceptance of the terms of this agreement in a form acceptable to the Board.

Section 7. **Effect of Contribution to Fund.** Any individual Employer who executes and deposits any such written acceptance, or who in fact makes one or more contributions to the Fund, assumes and shall be bound by all of the obligations imposed by this Trust Agreement upon the individual Employer, is entitled to all rights under this Agreement and is otherwise subject to it in all respects.

ARTICLE IX AMENDMENT OF TRUST

Section 1. **Amendment.** This agreement and Declaration of Trust may be amended in any respect not specifically prohibited in this instrument from time to time by a written instrument executed by a majority of the Employer Associations named herein and the Union named herein who shall be considered for purposes of amendment the Trustors of this agreement. Said amendment shall be signed by each Trustee as evidence of his acceptance of it. Any such instrument constituting an amendment shall be annexed hereto. If such amendment does not by its own terms fix the effective date thereof, then the Trustees in their sole discretion shall have full power to fix such effective date by resolution.

Section 2. **Limitation on Right to Amendment.**

(a) No amendment may be adopted which will alter the basic principles of this Agreement and Declaration of Trust or be in conflict with the then existing bargaining agreements with the Union or be contrary to any then applicable law or governmental rule or regulation.

(b) No amendment shall be adopted which shall impose different or additional duties or liabilities upon the Trustees or diminish any immunity of the Trustees without the written consent of each Trustee then in office.

(c) No amendment shall be permitted which permits the Fund to be used other than to provide for welfare benefits for the employees and for the administration of the Fund and the welfare benefits. Nor shall any amendment be permitted which gives to the Association, Union, Employers or Employees, individually or collectively, an

individual right, title, or interest in the money or property of the Fund.

Section 3. **Notification of Amendment.** Whenever an amendment is adopted in accordance with this Article, a copy thereof shall be distributed to each Trustee, and the Trustees shall so notify any other necessary persons or parties and shall execute any instrument or instruments necessary in connection therewith.

ARTICLE X DURATION AND TERMINATION

Section 1. **Original Term, Renewal and Termination.** The duration of this Agreement shall be for a period commencing September 20, 1954, and continuing until midnight September 19, 1955; and unless one party shall give written notice to the other on or before June 19, 1955, of termination of this Agreement, same shall automatically renew for an additional period of one year, from September 20, 1955 to September 19, 1956; and shall continue to automatically renew thereafter from year to year unless written notice of termination is given by one party to the other on or before June 19th of any such year. No notice of termination may be given, or if previously given, shall be deemed cancelled, after negotiations have been completed by the Joint Negotiating Committee on the Master Labor Agreement Between Southern California General Contractors and The International Union of Operating Engineers, Local No. 12, if such Agreement provides for a Health and Welfare Fund. Notice of termination referred to hereinabove, must be given by the Employer Association and served upon the Union: or by the Union and served upon the Employer Associations. Service upon either the Union or the Employer Associations may be made by registered mail addressed to such party or parties at the offices of the Trust Fund.

Section 2. **Power of Termination.** The organizations vested with the right to appoint and remove Trustees, namely, the original signatory Employer Associations on behalf of the Employer, or those remaining, in event of withdrawal of one or more, as provided as Article V, Section 7, Local Union No. 12, International Union of Operating Engineers, A. F. of L. are vested with the sole and exclusive right of termination. This Agreement and Declaration of Trust may be terminated at any time, without notice, by mutual consent, by instrument in writing executed by all of such parties.

Section 3. **Disposition of Funds.** In the event of termination of this Agreement the balance in the Trust Fund, if any, shall be exhausted by continuing the benefits so long as the cash in the Trust Fund will permit after the payment of all expenses of operating and/or winding up the fund. Benefits shall be continued for those eligible employees whose names appear on the eligibility list of the Trust for the last month preceding the termination of this Agreement. The benefits that shall be continued shall be those in force as of the last day of the month prior to the termination of this Agreement and the administration of such benefits shall be under the supervision of the Trustees acting as of such date and shall be in accordance with the terms and provision of this Agreement.

In the event of the termination of this Agreement and Declaration of Trust, no part of the corpus or income of said Fund shall be used for or diverted to purposes other

than for the exclusive benefit of the Employees, or the administrative expenses of the Fund or for payments in accordance with the provisions of the Fund.

Under no circumstances shall any portion of the corpus or income of the Fund, directly or indirectly, revert or accrue to the benefit of any contributing Employer, or to the benefit of the Union. No use thereof for the benefit of the Employees, or beneficiaries, shall be made except by way of health and welfare benefits and excluding always any direct distributions of cash or property.

Section 4. **Maximum Term.** In no event shall the Trust established by this agreement continue for a longer period than is permitted by law.

ARTICLE XI MISCELLANEOUS PROVISIONS

Section 1. **Interpretation by taxing authorities.** The parties are entering into this Trust Agreement and the payments into the Fund are being made by individual Employers, upon the condition and understanding that all payments made by such individual Employers into the Fund are and will continue to be legally deductible and allowable as business expenses for tax and all other purposes, and that the same are not taxable to the employees concerned as compensation. The Board of Trustees will promptly cause this Agreement and the Plan of Benefits hereunder to be submitted to the Federal Bureau of Internal Revenue, and to any other Federal or State agencies they may deem appropriate, for a ruling or rulings with regard to such questions. In the event that it is determined by any appropriate agency or Court, or in the event that any applicable law, regulation, ruling or policy provides, that such payments are not so deductible or allowable, or are taxable to the employee, then either party may reopen this Agreement and the Collective Bargaining Agreement, upon ten (10) days written notice to the other party, for the negotiation of any amendment or modification to said agreements as may be necessary to accomplish the objective herein stated.

Section 2. **Liability of Parties to this Agreement.** Neither the Associations, their members or other Employers, nor the Union, nor any officer, agent, employee, Trustee nor any committee members of the Associations or the Unions shall be liable to make contributions to the Fund or be under any other liability to the Fund or with respect to the Health and Welfare Plan, except that he may be an Employer required to make contribution to the Fund with respect to his own operations or to the extent he may incur liability as a Trustee as herein provided. The liability of any Employer to the Fund or with respect to the Health and Welfare Plan, shall be limited to the payments required by this agreement and in no event shall he or it be liable or responsible for any portion of the contributions due from other individual Employers; the individual Employers shall not be required to make any further payments or contributions to the cost of operation of the Fund or of the Health and Welfare Plan.

Neither the Associations, their members, the Union, Employers, nor any employee shall be liable or responsible for any debts, liabilities or obligations of the Fund or the Trustees, or for the validity or sufficiency of this Agreement or the Plan.

Section 3. **Audit of Fund.** An annual audit of the Fund shall be made at the end of each fiscal year by independent certified public accountants selected by the Trustees. A statement of the results of said audit shall be made available for inspection by interested persons at the office of the Fund and at such other place as may be designated by the Trustees. More frequent audits may be made at the direction of the Trustees.

Section 4. **Trustee as Beneficiary.** A Trustee of this Trust may also be a beneficiary thereof if he otherwise qualifies as an eligible employee; and nothing contained herein shall be construed or interpreted to prevent any Trustee, who is also an eligible employee, from participating in the benefits of the Plan.

Section 5. **Separability of Agreement.** Should any provision in this Trust Agreement or the plan or rules and regulations adopted thereunder be deemed or held to be unlawful or invalid for any reason, such fact shall not adversely affect the provisions herein and therein contained unless such illegality shall make impossible or impractical the functioning of the Trust and the Plan. In the event the functioning of the Trust and the Plan becomes impossible or impractical for such reason, all the then parties, including the Trustees, shall endeavor to devise and adopt an amendment which will permit, if possible, the functioning of the Trust and Plan as nearly as possible, in accordance with the true spirit and intent thereof. In the event any portion of this Agreement is invalidated by existing or future State or Federal legislation or by the ruling of any Court or other public authority of competent jurisdiction, such invalidation shall apply only to those portions of this Agreement directly invalidated, and all remaining portions hereof shall remain in full force and effect. The parties hereto further agree in the event of any such invalidation to immediately begin negotiations for the purpose of correcting the unlawful provisions hereof and carrying out as fully as lawfully possible the spirit and purpose of this Agreement.

Section 6. **Authority of Association.** The Associations, in executing this Agreement and Declaration of Trust, do so for themselves and for and on behalf of their respective eligible members whose names are set forth in a schedule attached hereto; and represent that all of said members have authorized the respective Associations to act on behalf of such members in such execution; and have agreed that such execution shall be binding upon such members with like effect as if such members had each personally executed this Agreement. New association members shall be admitted to participation in the Plan as elsewhere provided in this agreement.

Section 7. **Notices.** Any notice required to be given under the terms of this Agreement shall be deemed to have been duly served if delivered personally to the person to be notified in writing, or if mailed in a sealed envelope, postage prepaid, to such person at his last known address as shown in the records of the Fund, or if sent by wire to such person at said last known address.

Section 8. **Successors and Assigns.** The provisions, conditions, and covenants of this Agreement and Declaration of Trust shall apply, extend to, be binding upon and inure to the benefits of the heirs, executors, administrators, successors and assigns of the parties hereto.

Section 9. **Construction of Terms.** Wherever any words are used in this Agreement and Declaration of

Trust in the masculine gender, they shall be construed as though they were also used in the feminine or neuter gender in all situations where they would so apply, and vice versa; and wherever any words are used in this Agreement and Declaration of Trust in the singular form, they shall be construed as though they were also used in the plural form in all situations where they would so apply, and vice versa.

Executed at Los Angeles, California this 23rd day of November, 1954:

EMPLOYER ASSOCIATIONS:

SOUTHERN CALIFORNIA CHAPTER
OF THE ASSOCIATED GENERAL
CONTRACTORS OF AMERICA

By (Signed) : W. E. Irish
President

EXCAVATING AND GRINDING
CONTRACTORS, INC.

By (Signed) : L. M. Prince
President

HOME BUILDERS INSTITUTE, INC.

By (Signed) : Arthur C. Wright
President

BUILDING CONTRACTORS ASSOCIATION
OF CALIFORNIA, INC.

By (Signed) : L. U. Jones
President

UNION

LOCAL UNION NO. 12, INTERNATIONAL
UNION OF OPERATING ENGINEERS,
A. F. of L.

By (Signed) : Harry M. Browitt
President

By (Signed) : P. A. Judd
Recording and Corres. Secretary

By (Signed) : R. B. Bronson
Business Manager

The undersigned, named as Original Trustees in the foregoing Agreement and Declaration of Trust, do acknowledge that they have read the foregoing instrument, do understand the contents thereof; and do hereby agree to act as Trustees thereunder, to comply with all of its terms and provisions, and to hold the Fund created by said Agreement in trust for the uses and purposes set forth in the Agreement.

Employer Trustees:

(Signed) George M. Pardee, Jr.

(Signed) D. W. Asher

(Signed) George Bingham

(Signed) R. W. Spicer

(Signed) Leo J. Volk

Union Trustees:

(Signed) R. B. Bronson

(Signed) Duncan Campbell

(Signed) H. M. McNeel

(Signed) James J. Twombly

(Signed) B. Lee Turner

AMENDMENT TO AGREEMENT AND DECLARATION OF TRUST
ESTABLISHING THE OPERATING ENGINEERS HEALTH & WELFARE FUND

THIS AMENDMENT made and entered into in the State of California this 13th day of MARCH, 1998, by and between the Employer Associations and the Union party to that certain Agreement and Declaration of Trust Establishing the Operating Engineers Health & Welfare Fund ("Trust Agreement") first executed at Los Angeles, California, on November 23, 1954.

The Trust Agreement is hereby amended as follows:

1. Article I is amended by adding the name "Nevada Chapter, Associated General Contractors of America, Inc." and the name "Nevada Contractors Association" as Employer Associations recognized as Trustors under the Trust Agreement.

2. The first sentence of Article V, Section 1, of the Trust Agreement is amended and restated as follows:

"The Fund and Plan shall be administered by a Board of Trustees consisting of sixteen Trustees, eight of whom shall be designated "Employer Trustees" and eight of whom shall be designated "Union Trustees."

In all other respects, Article V, Section 1, shall remain unchanged.

3. Article V, Section 2(b)(3), of the Agreement is amended and restated in its entirety, and a new Section 2(b)(b) is added, as follows:

"(3) One (1) Trustee shall be appointed by Nevada Chapter, Associated General Contractors of America, Inc.

"(4) One (1) Trustee shall be appointed by Nevada Contractors Association.

The manner and method of appointment of Employer Trustees shall be determined exclusively by such Employer Associations."

This Amendment shall become effective when duly executed by a majority of the Employer Associations, the Union, and by Nevada Contractors Association.

EMPLOYER ASSOCIATIONS

ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, INC.

By _____

BUILDING INDUSTRY ASSOCIATION OF CALIFORNIA, INC.

By _____

ENGINEERING CONTRACTORS' ASSOCIATION, INC.

By _____

SOUTHERN CALIFORNIA CONTRACTORS ASSOCIATION, INC.

By  _____

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SAN DIEGO CHAPTER, INC.

By _____

BUILDING INDUSTRY ASSOCIATION OF SAN DIEGO COUNTY

By _____

"(4) One (1) Trustee shall be appointed by Nevada Contractors Association.

The manner and method of appointment of Employer Trustees shall be determined exclusively by such Employer Associations."

This Amendment shall become effective when duly executed by a majority of the Employer Associations, the Union, and by Nevada Contractors Association.

EMPLOYER ASSOCIATIONS

ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, INC.

By _____

BUILDING INDUSTRY ASSOCIATION OF CALIFORNIA, INC.

By *Linda Cochran*
ENGINEERING CONTRACTORS' ASSOCIATION, INC.

By _____

SOUTHERN CALIFORNIA CONTRACTORS ASSOCIATION, INC.

By _____

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SAN DIEGO CHAPTER, INC.

By _____

BUILDING INDUSTRY ASSOCIATION OF SAN DIEGO COUNTY

By _____

"(4) One (1) Trustee shall be appointed by Nevada Contractors Association.

The manner and method of appointment of Employer Trustees shall be determined exclusively by such Employer Associations."

This Amendment shall become effective when duly executed by a majority of the Employer Associations, the Union, and by Nevada Contractors Association.

EMPLOYER ASSOCIATIONS

ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, INC.

By _____

BUILDING INDUSTRY ASSOCIATION OF CALIFORNIA, INC.

By _____

ENGINEERING CONTRACTORS' ASSOCIATION, INC.

By *[Signature]* *John (Snyder, Acting Exec Dir.)*

SOUTHERN CALIFORNIA CONTRACTORS ASSOCIATION, INC.

By _____

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SAN DIEGO CHAPTER, INC.

By _____

BUILDING INDUSTRY ASSOCIATION OF SAN DIEGO COUNTY

By _____

"(4) One (1) Trustee shall be appointed by Nevada Contractors Association.

The manner and method of appointment of Employer Trustees shall be determined exclusively by such Employer Associations."

This Amendment shall become effective when duly executed by a majority of the Employer Associations, the Union, and by Nevada Contractors Association.

EMPLOYER ASSOCIATIONS

ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA, INC.

By  10/8/07

BUILDING INDUSTRY ASSOCIATION OF CALIFORNIA, INC.

By _____

ENGINEERING CONTRACTORS' ASSOCIATION, INC.

By _____

SOUTHERN CALIFORNIA CONTRACTORS ASSOCIATION, INC.

By _____

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SAN DIEGO CHAPTER, INC.

By _____

BUILDING INDUSTRY ASSOCIATION OF SAN DIEGO COUNTY

By _____

ENGINEERING AND GENERAL
CONTRACTORS ASSOCIATION

By _____

NEVADA CHAPTER, ASSOCIATED GENERAL
CONTRACTORS OF AMERICA, INC.

By _____

NEVADA CONTRACTORS ASSOCIATION

By _____

UNION

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL UNION NO. 12

By  _____