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Title: **Building Contractors Association, Inc. and Mason Tenders District Council of Greater New York, LIUNA, Local 78, 79 (2001)**

K#: **8196**

Employer Name: **Building Contractors Association, Inc.**

Location: **New York NY**

Union: **Mason Tenders District Council of Greater New York, LIUNA**

Local: **78, 79**

SIC: **1540**

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Number of Workers: **7200**

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K 8196  
7,200 workers

55 pgs.

7/1/2001 - 6/30/2006  
2001-2006

TRADE AGREEMENT BETWEEN

BUILDING CONTRACTORS ASSOCIATION, INC.

AND

MASON TENDERS DISTRICT COUNCIL OF  
GREATER NEW YORK

2001-2006  
BUILDING CONTRACTORS TRADE AGREEMENT  
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## COLLECTIVE BARGAINING AGREEMENT

This Collective Bargaining Agreement (hereinafter "Agreement") is entered into by and between the undersigned BUILDING CONTRACTORS ASSOCIATION, INC, (hereinafter "Association") on behalf of its constituent employers (hereinafter "Employer(s)") and the MASON TENDERS' DISTRICT COUNCIL OF GREATER NEW YORK, affiliated with the Laborers International Union of North America, (hereinafter "Union"), for its constituent Local Union Numbers 78 and 79.

### ARTICLE I

#### Section 1.-

The Union claims and has shown proof, and the Association and all Employers acknowledge and agree, that a majority of employees for each and every Employer have authorized the Union to represent them in collective bargaining. The Association and all Employers hereby recognize the Union as the exclusive bargaining representative under Section 9(a) of the National Labor Relations Act for all employees who perform work covered by Article IV of this Agreement on all present and future job sites.

#### Section 2.-

This Trade Agreement is effective on all jobs in Greater New York City within its established boundaries.

#### Section 3.-

When Employers who are members of the Association perform any work outside of the established boundaries of Greater New York City, the Employer shall abide by the terms and conditions of the applicable Trade Agreement in that area to which a subordinate Union of the Laborers International Union of North America is a party. If no Trade Agreement exists, the Employer shall abide by the applicable terms and conditions established between the Employers and a union affiliate of the Laborers International Union of North America in that area. The foregoing shall apply, however, to such agreements and practices which do not violate the National Labor Relations Act, as amended.

## ARTICLE II

### Section 1.—

No Employer shall enter into a contract with any other person, firm, partnership, corporation or joint venture employing Mason Tenders to perform bargaining unit work as defined in Article IV on the same job site, unless such other person, firm, partnership, corporation or joint venture is bound by an Agreement with the Union.

### Section 2.—

Any Employer who contracts out or sublets any of the work coming within the jurisdiction of the Union as defined in Article IV shall assume the obligations of any subcontractor for prompt payment of employees' wages and other benefits, including reasonable attorneys' fees incurred in enforcing the provisions hereof.

### Section 3.—

No Employer shall subcontract any cleaning work and/or removal work of any type or kind as defined in Article IV of this Agreement.

### Section 4.—

The Employer agrees that it will not subcontract any work covered by this Agreement in order to circumvent the payment of wages and fringe benefits and the working conditions provided for in this Agreement. The Employer and the Union hereby agree to the elimination of lumping.

### Section 5.—

If an Employer covered by this Agreement or any such owner or principal forms or acquires by purchase, merger or otherwise, an interest, whether by ownership, stock, equitable or managerial, in another company performing bargaining unit work within this jurisdiction, this Agreement shall cover such other operation and such other bargaining unit employees shall be considered an accretion to the bargaining unit.

### ARTICLE III

#### Section 1.--

a) It shall be a condition of employment that all employees of the Employer who perform work covered by Article IV of this Agreement shall become or remain members in good standing of the Union or shall pay uniform initiation and agency fees on or after the eighth (8) day following the date of execution of this Agreement, or after the eighth (8) day following the beginning of covered employment. The Union agrees that all employees will be accepted to membership or its roster of eligible laborers on the same terms and conditions generally applicable to other members or laborers on its roster of eligible laborers and, further, that the Employer will not be requested to discharge an employee for reasons other than such employee's failure to tender the periodic dues or fees uniformly required.

b) The Local Union shall have the right to collect a reasonable fee for inclusion on the roster of eligible laborers from all persons who are not members in good standing of the Union or are not tendering uniform initiation and agency fees uniformly required. Said fee shall be collected to cover the reasonable cost of maintaining the roster of eligible laborers. At the earliest date permitted by law, a person who has paid said fee to be included on the roster of eligible laborers and is referred to an Employer shall tender to the Union upon acceptance for employment by the Employer the uniform initiation and agency fees uniformly required.

c) The Employer agrees to discharge, upon receiving seven (7) days' written notice, signed by the Secretary-Treasurer of the Union, any employee with respect to

whom such notice may state that such employee has failed to tender uniform initiation and agency fees uniformly required, provided that said written notice is also provided to said employee and that said employee has not paid the required initiation and agency fees within seven (7) days of the date of the written notice. The Union shall indemnify and hold the Employer harmless for any financial liability arising from the Employer's compliance with such notice.

**Section 2.—**

a) The Employer shall, on forty-eight (48) hours written notice, advise the Union of all jobs on which its Employers will employ Mason Tenders, giving all of the pertinent data to the Union with respect to the type of work to be performed. The Employer agrees that all Mason Tenders hired to perform the work set forth in this agreement, within the geographic jurisdiction of the Union, shall be listed on the roster of eligible laborers maintained by the Union. The roster of eligible laborers shall be composed of all individuals that are Members in good standing of the Union or Agency Fee Participants.

b) On job sites where there are five (5) or fewer Mason Tenders employed, the Employer shall be permitted to staff the job site with Mason Tenders provided that the Mason Tenders are listed as eligible. The Union shall appoint one of the Mason Tenders employed by the Employer as Shop Steward. The Employer may request Mason Tenders from the Out of Work list of eligible laborers maintained by the Union.

c) On job sites where more than five (5) Mason Tenders are employed from the start by the Employer, the first Mason Tender on the job site shall be selected by the Employer. The second employee on a job site shall be a working Shop Steward appointed by the Union. The next three (3) employees on a job site shall be selected by the

Employer. Commencing with the sixth (6th) employee on a job site: 50% of all employees may be furnished and referred by the Union to the Employer from the Out of Work list and 50% shall be selected by the Employer. All employees hired by the Employer shall be listed on the roster of eligible laborers.

d) All Shop Stewards shall be certified Shop Stewards designated by the Union as eligible for Shop Steward service, as defined by this Agreement and the Policies and Procedures of the Union governing the appointment of Shop Stewards. If none of the Mason Tenders selected by the Employer is a certified Shop Steward designated by the Union as eligible for Shop Steward service, then the Union shall have the right to refer a Shop Steward to the job.

e) Irrespective of the above subparagraphs b) and c) of this Section, the fifth Mason Tender on the site, and each fifth Mason Tender on the site thereafter (i.e., fifth, tenth, fifteenth and so on), shall be an apprentice. However the Employer may request that either the third or fifth Mason Tender on any job site shall be an apprentice, with the approval of the Union. When the Employer requests an apprentice as the third Mason Tender on the job site, the tenth Mason Tender on the job site and each fifth Mason Tender thereafter, shall be an apprentice.

f) There shall be a Joint Apprenticeship Training Committee ("JATC") charged with direction of the Apprentices. The Employer agrees to and shall be bound by all terms and conditions of the JATC documents creating the JATC and by any rules or by-laws adopted by the JATC, as they may be amended from time to time. Further, effective July 1, 2003, or at such time as the Union determines in its sole discretion thereafter, the Union shall have the authority to implement a Mandatory Apprenticeship Program pursuant to which all Mason Tenders on any job shall either be credited as journeymen by the JATC, or

designated and enrolled as Apprentices in the JATC administered program. The Employer hereby agrees to abide by all rules and regulation, and amendments thereto, of the Union and the JATC concerning the implementation and maintenance of the Mandatory Apprenticeship Program. To the extent that any rules and regulations of the JATC or of Mandatory Apprenticeship Program contradict the terms of this Agreement, the terms of the JATC documents and Mandatory Apprenticeship Program shall be fully incorporated herein and shall control.

g) The Employer may, for a period not to exceed two (2) days during the last two weeks of a job, increase the size of the workforce on the job site without requesting matching employees from the Union provided that these Mason Tenders are listed on the roster of eligible Laborers.

h) No individual may serve as a Shop Steward on two job sites simultaneously.

i) In the event the Employer fails to report two (2) job sites as provided by subsection 2(a) of this section, the Employer shall select the first Mason Tender from the roster of eligible laborers, the second Mason Tender on the job site shall be a Shop Steward appointed by the Union, and commencing with the third Mason Tender on a job site, 50% of all employees shall be furnished and referred from the Out of Work list and 50% shall be selected by the Employer from the roster of eligible laborers.

j) The Employer shall have the absolute right to reject any job applicant or applicants referred by the Local Union. In the event of such rejection, the Local Union will refer another applicant or applicants to the Employer.

k) In the event that any applicable statute is enacted or any decision rendered by a court or administrative agency having jurisdiction thereof, which statute or decision

permits union security or hiring provisions more favorable to the Union than those contained herein, then the parties hereto shall meet and amend this Trade Agreement so as to give the Union the maximum benefits permitted by such statute or decision.

l) There are certain existing mutual understandings among the Mason Tenders, Concrete Workers and Lathers, respectively, which apply to the Borough of Richmond and which shall be considered part of this Trade Agreement. Accordingly, the Employer agrees that in the Borough of Richmond the handling of Lathers materials and the tending of Plasterers is the work of the Mason Tenders. Wage rates and the rate of contributions for the performance of such work shall be the rates provided under this Trade Agreement.

Section 3.— If the Employer is serving as a paymaster on a job site, the following provisions shall supercede any lesser provisions of this Agreement:

a) The first Mason Tender on that job site shall be a Shop Steward referred by the Union, the second Mason Tender on the job shall be a Foreman, and commencing with the third Mason Tender on the job site, 100% of Mason Tenders shall be furnished and referred by the Union to the Employer from the roster of eligible laborers. All Mason Tenders hired by the Employer shall be listed on the roster of eligible laborers, as described in Article III, Section 2(b). Further, the Shop Steward shall be provided the first opportunity to work any overtime that is available.

b) A Mason Tender shall be employed on the job site to tend the trades when work of any kind is being performed.

c) The Employer acknowledges and agrees that it and the company for which it is serving as a paymaster are joint employers and one another's agents for all work performed at the site. The companies in the paymaster relationship shall be jointly and severally liable for all violations of this Agreement committed by either, whether acting independently or in concert, including but not limited to any action taken by either in

violation of the provisions of this Agreement prohibiting the subcontract of on site work to entities not bound to a collective bargaining agreement with the Union.

d) The Union reserves the right to exercise all lawful means to obtain recognition and/or a signed collective bargaining agreement from any employer at a job site that is not bound to an Agreement with the Union.

**Section 4.--**

The Employer and the Union agree there will be no discrimination against any employee or applicant for employment, with respect to race, creed, color, national origin, sex, age, handicap, veteran status, marital status, religion, sexual orientation, affectional preference, concerted activity or union membership in all employment decisions, including but not limited to recruitment, hiring, compensation, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, layoff and termination, and all other terms and conditions of employment except as provided by law.

The preceding shall not be construed, however, to waive any procedural or substantive rights of employees under otherwise applicable law.

**ARTICLE IV**

**Section 1.--**

The Employer shall exclusively employ Mason Tenders to perform the following work:

a) Unloading of materials to fence in a job site or the cleaning and sweeping of sidewalks or their maintenance, or the erection and maintenance, of safety equipment, barricades and flags, from the inception of the job to its completion.

b) Jacking up of trailer offices or the erection and dismantling of shanties on the job site, as well as maintaining and cleaning such structures, or the opening and closing of a construction site for the purpose of providing access to the job site or work areas for deliveries of material, equipment and machinery. When a Mason Tender is otherwise employed on the job site and is called in to perform his or her normal duties covered by this Agreement, this work shall include, but not be limited to the opening and closing of all fences, gates, chains and temporary doors used to control general access, but shall not include the opening and closing of gates or doors reserved exclusively for personnel or controlled by supervisory personnel. Mason Tenders shall be responsible for the flagging of all trades and the public.

c) Installation and maintenance of temporary heat in trailers, shanties, or temporary toilet facilities on the job site, or the heating of masonry materials for installation during the winter.

d) Installation and maintenance of fire preventive equipment, including fire extinguishers on the job site.

e) Assist the Project Engineers at the inception of the job to perform the routine marking of locations for the placement of temporary facilities and signs.

f) Tending Masons or Bricklayers on construction jobs of every nature and description including bridges, tunnels and sewer jobs.

g) Mixing and placing concrete in the foundations for masonry bearing walls and foundations for structural steel, frame, or stone buildings, according to the International Union ruling of January 28, 1948.

h) Do rough concrete of the cellar floor to the underside of the finished concrete cellar floor, except where reinforcing is used.

i) Wheel or carry materials in or about the job (construction, reconstruction, remodeling or alteration) or assist in the preparation of masonry materials to be used by mechanics, whether such preparation is by hand or by other process, or supply, convey, stock pile, clean, load or unload material which has not otherwise been awarded to other trades, whether by hand or any other mechanical device, including the operation of fork lifts when used at levels not in excess of nine (9) feet.

j) Clean or scrape mortar or plaster or spackle or debris of any kind or type from windows, door bucks, window frames, or do rough cleaning only (except the cleaning in connection with the removal of protection) of porcelain and china bath fixtures or clean floors or refuse and deposit in chute or in trucks until the building is completed; it is agreed, however, that removal of the debris resulting from the cleaning and removal of protection from the porcelain and china bath fixtures is the work of the Mason Tender.

k) Moving, placing, removing, installing, maintaining and stocking of temporary sheeting of floors or runways or scaffolds for use of Bricklayers and Mason Tenders or any other employees on the job site or helping carpenters on handling and erection of fences and all protection work on the job site, and the application, maintenance and removal of all protective materials (grease, paper and tape, etc.) used to protect finished surfaces of elevators, door bucks, window frames, doors etc., during construction, (except the protective materials applied prior to delivery to the job site). It is agreed, however, that the removal of debris resulting from the removal of protective materials applied prior to delivery to the job site is the work of the Mason Tender. When any material other than wood is used

for perimeter protection, i.e. cables, pipe, etc., the installation and removal of said material is the work of Mason Tenders.

l) Erect or remove scaffolds and runways for the use of Bricklayers, Masons or Mason Tenders, or any other employees on the job site, or erect or remove runways for the placing of concrete in accordance with Paragraph (g) or erect or remove planking on all scaffolds.

m) Hanging centers for the use of Bricklayers, where hollow tile or brick arches are used, and pour rough concrete on Republic or Kahn Arches.

n) Work hand pumps for all work covered by this Agreement when the Employer elects to do the pumping by hand.

o) Operate mortar or concrete mixers other than those driven by steam or compressed air, for work covered by this Agreement.

p) Operate pumps not driven by steam or compressed air for all work covered by this Agreement, except where five (5) or more pumps are being used on any one operation.

q) Alteration work, including but not limited to the removal of partitions, ceilings, walls, all floors, floor coverings, fixtures, reinforced concrete floors, and ducts, any of which are not to be re-used, and the removal of walls which have been erected by Bricklayers or Plasterers.

- r) Cleaning and removal of all combinations of masonry rubbish in remodeling or alteration work.
- s) Cutting or opening walls of any thickness.
- t) Mason Tenders shall strip all forms and cut concrete, whether performed by hand or machine, when Mason Tenders pour concrete.
- u) Placing steel forms, wooden forms, or any other forms for concrete foundations where said work has been awarded to Mason Tenders.
- v) Loading or unloading materials for Bricklayers and materials for Mason Tenders to and from trucks at the job site, except that the driver may assist such loading and unloading.
- w) The tearing down of work, chopping and removal of all debris on all alteration or remodeling projects.
- x) If any party to this Agreement uses salamanders, stoves or other heating equipment which uses solid (coal, coke etc.) or liquid (kerosene, LPG, etc.) fuel for the sole protection against the weather of Masonry or concrete work installed under this Agreement in conjunction with canvas or plastic covers over open spaces to permit the continuation of work on the job site, the Mason Tenders shall install and maintain the canvas and plastic coverings and shall unload, place, maintain and tend the salamanders, stoves and other heating equipment. The tending of salamanders and other heating equipment shall be the exclusive work of the Mason Tenders. Any temporary heat of any kind provided on the job site to permit the continuation of work by all trades and personnel employed on the job site

shall be the exclusive work of the Mason Tenders from the inception to the completion of the job. If any party to this Agreement provides temporary heat that uses natural gas as a combustant supplied to salamanders which have been adapted to accept natural gas and/or provides natural gas salamanders or other heating equipment to be installed by others, Mason Tenders shall be used exclusively to perform this work; except where any law or administrative code requires others to perform any related work not defined in this Agreement. Mason Tender work shall include, but not be limited to, all unloading, all stockpiling, and all handling and distribution of salamanders and other heating equipment to the location of installation (it being understood that all unloading, stockpiling, and handling would be under employer supervision and employer discretion based on job conditions); any incidental handling or relocating of salamanders already installed to permit the proper distribution of heat and the continuance of work by Mason Tenders or others on the job; any fire watch or emergency service necessary to insure the safe and continual maintenance of temporary heat and the safety to the public or other employees on the job site. All such work performed between midnight Sunday and midnight Friday shall be compensated at straight time rates if the Mason Tender has been employed on a regular shift of eight consecutive hours. All work in excess of such eight hour shift or during the weekend period, midnight Friday through midnight Sunday, and on stipulated holidays shall be compensated at time and one-half. Coke and oil fired salamanders shall have a minimum of two men at all times where five or more of these types are used.

y) Mason Tenders shall be employed as bell ringers on material hoists. There shall be two Mason Tenders so assigned. One shall be stationed at the bottom of the hoist and the other Mason Tenders on the floor where work is in progress. Mason Tenders shall assist in loading or unloading all material onto and from the hoist and shall be in sole charge of signaling the engineer for hoisting such materials, when necessary, whether by

hell, radio or other methods, and shall be in absolute control of the signaling rope for raising or lowering the hoist from floor to floor.

z) Mason Tenders shall also continue to do all the work which they have performed in the past.

aa) Tending and assisting the erection, construction or installation of precast or prefabricated masonry panels.

bb) All cleaning and removal of debris, rubbish and refuse of any type and kind for all trades on all jobs.

cc) Final construction cleaning operation on any construction project or part thereof before the project or any part thereof is turned over to the owner.

dd) Unloading, handling and assisting in the setting of precast sills and coping where mechanical equipment is not used.

## Section 2.—

The Employer shall exclusively employ Mason Tenders to perform the following work:

The removal, abatement, encapsulation or decontamination of asbestos, lead or other toxic or hazardous waste or materials which work shall include, but not be limited to: the erection, moving, servicing, operation, and dismantling of all enclosures, scaffolding, barricades, decons, negative air machines; vacuum trucks, blasting and scraping equipment, chemicals and chemical applying equipment, and any other tools, equipment or

materials used in the removal, abatement, encapsulation or decontamination of asbestos, lead or other toxic or hazardous waste or materials, as well as the servicing and operation of tools and performance of all work related to the sorting, labeling, bagging, cartoning, crating, packaging and movement of such asbestos, lead or other toxic or hazardous waste or materials for disposal; the movement and/or transportation and disposal of such asbestos, lead or other toxic or hazardous waste or materials to any authorized disposal site; the clean up of the work site and all other work and stand-by time incidental to the removal, abatement, encapsulation or decontamination of such asbestos, lead or other toxic or hazardous waste or materials; and the performance of safety watch duties in containment.

**Section 3.--**

The Employer shall exclusively employ Mason Tenders to perform the following work:

Complete demolition (wrecking), dismantling, remodeling or alterations of entire buildings or structures, in whole or in part, of any size, type (reinforced concrete, structural steel, wall bearing, wood), or purpose (commercial, non-commercial, residential, industrial, institutional, transportation), or the complete demolition (wrecking) of any portion of all buildings or structures. This work shall include, but not be limited to, the following:

a) all manual work involving the tearing down, breaking away, disposal of, and/or removal from, the job site of any and all building materials, whether debris or salvaged materials, used in the construction of all buildings or structures (concrete, terra cotta, brick, mortar, plaster, structural and ornamental lumber, roofing materials of any type, natural or

manufactured stone, ornamental iron, lath, reinforcing rods, floors and flooring materials), and structural components (wood, steel or beams of any material);

b) the complete removal of one or more stories from a building or structure when said building or structure is to be shorted in a height; the gutting of the interior of a building or structure by the removal of a partition and/or flooring; the demolition of any wall or walls of any building or structure, regardless of whether and/or where the walls are to be rebuilt, the removal of partitions and arches, or parts thereof, from one or more floors in any building, or structure, which is being renovated or remodeled; the removal of brick or concrete walls or walls to be rebuilt in their original position; and the removal of concrete walls which are to be rebuilt in a different position for the purpose of shortening the length or width of a building when said brick or concrete walls are to be rebuilt;

c) the breaking away, cleaning and removal of all masonry and wood or metal fixtures for salvage or scrap; all hooking and signaling when materials for salvage or scrap are removed by crane or derrick; all loading and unloading of materials carried away from the sight of wrecking; all cleaning, storing, stockpiling or handling of materials; all tearing down of work, removal of all debris, clean-up, burning, back-filling and landscaping of the site of the wrecked structure;

d) the use of any and all tools and/or equipment necessary to perform this work including, without limitation, shovels, picks, bars, hammers, sledge hammers, chisels, electrically, power and pneumatically operated hand tools (jack hammers, all saws and cutting tools, including reciprocating and Skill saws, chipping guns, drills, spaders, etc.);

e) the use of all manually operated equipment used to raise, lower, or hoist any and all equipment, tools or materials used to perform this work or to remove any and all debris

or salvaged materials; all cutting of any metal material, salvage or debris on the job site, whether by manual, mechanical, or the use of acetylene and oxygen burning equipment;

f) any and all hazard protection work used to protect Mason Tender employees, equipment, tools and materials and other employees on the job site, and/or the public from any damage or injury, or threat thereof, resulting from the performance of any of the work in this paragraph;

g) all work involving the providing of temporary heat of any kind for any purpose for the continuance of Mason Tenders to work on the job;

h) all foul weather protection to permit the continuance of work for Mason Tenders or other employees on the job site, to include the removal of ice and snow, when necessary on the job;

i) the cleaning and maintaining of all sidewalks, bridges, and public access areas;

j) all work involving the erection, maintaining, and dismantling of all scaffolding used by Mason Tenders, or built for other trades, including the unloading and removal of all scaffolding material on and off the job.

#### Section 4 –

Mason Tenders shall also continue to perform all work traditionally performed for Employers by members of former LIUNA Locals 30 and 95.

Section 5.—

The term "Mason Tender" as used in this Agreement includes all employees who perform work as described in Article IV of this Agreement and any other work awarded or assigned to the Union by agreement, award or act of the Laborers International Union of North America or the AFL-CIO.

Section 6.—

If any other labor organization claims jurisdiction over any work required by this Agreement to be performed by the Union, the parties agree to follow and be bound by the New York Plan for the Settlement of Jurisdictional Disputes. Pending the resolution of the dispute, the Employer shall assign Mason Tenders represented by the Union to perform the work in question.

## ARTICLE V

### Section 1.—

a) The Employer shall have the option to commence the regular work day at a time between 7:00 A.M. and 9:00 A.M. The Employer may change the start time on a job, provided such new start time shall remain in effect for at least five (5) days. The Employer may schedule a crew of Mason Tenders to start their regular work day prior to the regular work force for the purpose of removing or loading construction material or debris. The individual designated as the Shop Steward shall be employed where Mason Tenders are working.

b) With prior notification to the Local, the Employer shall have the option to increase the length of the regular work day from seven (7) hours in a twenty-four (24) hour period to eight (8) hours in a twenty-four (24) hour period, provided such increase in the work day shall continue for at least five (5) days on the job site.

c) Mason Tenders tending a hoist may be scheduled to start ten (10) minutes before the regular hour so as to permit other employees to start at the proper starting time. The same consideration shall be allowed to these Mason Tenders at quitting time. Five (5) minutes shall be allowed to Mason Tenders before 1:00 P.M. for tempering of mortar left in the tubs during the noon hour. The regular working hours and regular working days of Mason Tenders shall coincide with the regular working hours and days of Bricklayers and should there be any change in the regular working hours and or regular working days in the Bricklayers Trade Agreement, such change shall automatically become effective with respect to those Mason Tenders tending Bricklayers. Mason Tenders shall continue to have exclusive jurisdiction regarding the servicing of Bricklayers.

d) The Employer shall be permitted to schedule the commencement of the regular work day for Mason Tenders performing work related to the provision of temporary heat on masonry work between 7:00 A.M. and 9:00 A.M. Mason Tenders scheduled to perform work at times other than the regular hours of employment pursuant to this paragraph shall not perform any work other than work related to the provision of temporary heat, for so long as temporary heat is provided.

e) When conditions beyond the control of the Employer, such as severe weather, widespread power failure, fire, natural disaster, etc., prevent the operation of the job on one (1) or more work days during the regular work week, the Employer may schedule the Saturday of that calendar week during which work was prevented, as a make-up day at straight time. All hours worked in excess of seven (7) or an agreed upon eighth (8th) hour shall be paid at the rate of time and a half. When a holiday falls on a Saturday, then the make-up day rate shall be time and a half. In order to utilize a day "terminated" for one of the reasons listed above, no later than 10:00 A.M. of the day that work is "terminated", the Employer must notify the Union that the work day has been "terminated," and the Employer must further notify the Union of its desire to work a make-up day by noon of the day preceding the make-up day. Employees employed by the Employer on the day so "terminated" shall have the right of first refusal to work on the make-up Saturday, but said Employees shall also have the right to decline work on a make-up Saturday, without any penalty. The number of employees working on a make-up Saturday shall not exceed the number of employees working on the day that work "terminated". If Mason Tenders are needed to work a make-up Saturday, other than those already working on the job, the Employer shall call the Union for Mason Tenders. A make-up Saturday shall be a guaranteed seven (7) hour day or, with permission of the Union, eight (8) hour day. In the event work is terminated for one of the reasons listed above on the make-up Saturday, the

employee shall be paid for a seven (7) hour day or, with permission of the Union, eight (8) hour day.

f) f) When it is not possible to conduct alteration work during regular working hours in a building occupied by tenants, said work shall proceed on a straight time basis; however, individual Mason Tenders shall receive eight (8) hours pay for seven (7) hours work at the straight time wage rate or nine (9) hours pay for eight (8) hours work, at the straight time wage rate. In addition, Mason Tenders shall be allowed one-half (½) hour to eat, with this time being included in the seven (7) or eight (8) hours of work. All work in excess of seven (7) or eight (8) hours shall be paid at the rate of time and one-half (½). The Employer shall notify the Union in advance of beginning the shift schedule. In the event of the existence of any such condition, proper notice shall be given to the Union of the facts and circumstances and permission shall be obtained from the Union for the performance of the work outside of regular working hours.

#### Section 2.—

The following days shall be known as Holidays on which there shall be no performance of any work:

Sundays, New Year's Day, Presidents' Day, Decoration Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

#### Section 3.—

No work shall be performed on any of the days listed in Section 2 or as provided in Article VI, Section 2(a) unless in each instance written permission is first obtained from the Union.

Section 4.—

The Employer and the Union agree it to be their declared policy that the period for lunch shall, as nearly as possible, be uniform with that established with the other trades.

Section 5.—

The Employer may work two (2) shifts with the first shift at the straight time wage rate and the second shift receiving eight (8) hours pay for seven (7) hours work at the straight time wage rate or nine (9) hours pay for eight (8) hours work, at the straight time wage rate. In addition, members of the second shift shall be allowed one-half ( $\frac{1}{2}$ ) hour to eat, with this time being included in the seven (7) or eight (8) hours of work. In order to work the second shift, there must be a first shift, and shift work must be for a minimum of three (3) contiguous weekdays duration. All work in excess of seven (7) or eight (8) hours shall be paid at the rate of time and one-half ( $\frac{1}{2}$ ). The Employer shall notify the Union in advance of beginning the shift schedule. On shift work, the Shop Steward shall work no more than eight (8) hours. There shall be a Shop Steward on each shift, appointed by the Union. On shift work, all fringe benefit contributions shall be paid on hours worked.

ARTICLE VI

Section 1.—

Effective July 1, 2001, the wages of Mason Tenders shall be \$25.55 per hour during regular working hours.

Subject to the Union's right of allocation/reallocation as hereinafter provided in this section, and effective January 1, 2002, wages and/or fringe benefit contributions shall be increased by \$0.75 per hour.

Subject to the Union's right of allocation/reallocation as hereinafter provided in this section, and effective July 1, 2002, wages and/or fringe benefit contributions shall be increased by \$0.75 per hour.

Subject to the Union's right of allocation/reallocation as hereinafter provided in this section, and effective January 1, 2003, wages and/or fringe benefit contributions shall be increased by \$0.75 per hour.

Subject to the Union's right of allocation/reallocation as hereinafter provided in this section, and effective July 1, 2003, wages and/or fringe benefit contributions shall be increased by \$0.75 per hour.

Subject to the Union's right of allocation/reallocation as hereinafter provided in this section, and effective January 1, 2004, wages and/or fringe benefit contributions shall be increased by \$0.75 per hour.

Subject to the Union's right of allocation/reallocation as hereinafter provided in this section, and effective July 1, 2004, wages and/or fringe benefit contributions shall be increased by \$0.75 per hour.

Subject to the Union's right of allocation/reallocation as hereinafter provided in this section, and effective January 1, 2005, wages and/or fringe benefit contributions shall be increased by \$0.75 per hour.

Subject to the Union's right of allocation/reallocation as hereinafter provided in this section, and effective July 1, 2005, wages and/or fringe benefit contributions shall be increased by \$0.75 per hour.

Subject to the Union's right of allocation/reallocation as hereinafter provided in this section, and effective January 1, 2006, wages and/or fringe benefit contributions shall be increased by \$0.75 per hour.

The Union, in its sole and absolute discretion, reserves the right to allocate/reallocate any portion of the foregoing increases to any of the fringe benefit funds.

The rate for Foremen and for Assistant Foremen (Deputies) shall be \$35.00 per day and \$25.00 per day, respectively, above the prescribed rate for Mason Tenders.

Section 2.-

Except as specified in Article IV, Section 1(x) and Article VI, Section 2(b), all work performed outside of the regular seven (7) hours per day and on Saturdays shall be paid for at the rate of time and one-half (½). All work performed during lunch hour, Sundays and on the following legal holidays: New Year's Day, Presidents' Day, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, shall be paid for at the rate of double time. (For purposes of this Section and Article V, Section 2 above, the date New York City observes any of the referenced holidays shall be the contract Holiday in the event it is different from the date on which the Holiday actually falls).

Section 3.--

The Employer shall deduct one dollar (\$1.10) per hour, plus any additional sum per hour hereafter specified by the union, as dues from the wages of all Mason Tenders who authorize such deduction in writing and then promptly pay over such sums to the Mason Tenders District Council not later than one week after said deduction.

Section 4.--

Effective for the period July 1, 2001 to December 31, 2001, and subject to the Union's right to allocate/reallocate future increases as provided in Section 1 of this Article, the Employer shall pay weekly to the Trustees of the Mason Tenders District Council Welfare Fund \$2.70 per hour for all hours worked by Mason Tenders, Mason Tender Foremen and Mason Tender Assistant Foremen, for the purpose of providing benefits for death, accident, health, medical and surgical care, hospitalization and other such forms of group benefits for Mason Tenders, their spouses, and their eligible children, as the Trustees may, in their sole and absolute discretion, determine and, in addition, out of said monies the Trustees of the Welfare Fund shall provide coverage to conform with the New York State Disability Insurance Law for all Mason Tenders for the period of this Trade

Agreement, the cost of which shall be borne by such Welfare Fund. It is the intention of the parties that no contributions shall be required on the premium portion of wages.

Welfare coverage shall also be provided for all eligible employees of the Mason Tenders District Council, its constituent Local Unions and the Mason Tenders' District Council Fringe Benefit Funds provided contributions are made to the Fund on their behalves in the same amounts as are paid by other Employers.

**Section 5.—**

Effective for the period July 1, 2001 to December 31, 2001, and subject to the Union's right to allocate/reallocate future increases as provided in Section 1 of this Article, the Employer shall pay weekly to the Trustees of the Mason Tenders' District Council Pension Fund \$4.82 per hour for all hours worked by Mason Tenders, Mason Tender Foreman and Mason Tender Assistant Foremen. Contributions to the Pension Fund shall be utilized for the purpose of providing Pension and other Benefits for the eligible Mason Tenders as the Trustees may, in their sole and absolute discretion, determine. It is the intention of the parties that no contributions shall be required on the premium portion of wages.

Pension coverage shall also be provided for all eligible employees of the Mason Tenders' District Council, its constituent Local Unions and the Mason Tenders District Council Fringe Benefit Funds provided contributions are made to the Fund on their behalves in the same amounts as are paid by other Employers.

**Section 6.—**

Effective for the period July 1, 2001 to December 31, 2001, and subject to the Union's right to allocate/reallocate future increases as provided in Section 1 of this Article, the Employer shall pay weekly to the Trustees of the Mason Tenders' District Council Annuity Fund \$5.00 per hour for all hours worked by Mason Tenders, Mason Tender

Foremen and Mason Tender Assistant Foremen. Contributions to the Annuity Fund shall be utilized for the purpose of providing annuity and other benefits to eligible Mason Tenders as the Trustee may, in their sole and absolute discretion, determine. It is the intention of the Parties that no contributions shall be required on the premium portion of Wages.

Annuity Fund coverage shall also be provided for all eligible employees of the Mason Tenders' District Council, its constituent Local Unions and the Mason Tenders District Council Fringe Benefit Funds provided contributions are made to the Fund on their behalves in the same amounts as are paid by other Employers.

**Section 7.—**

Effective for the period July 1, 2001 to December 31, 2001, and subject to the Union's right to allocate/reallocate future increases as provided in Section 1 of this Article, the Employer shall pay weekly to the Trustees of the Mason Tenders Training Program Fund \$0.32 per hour for all hours worked by Mason Tenders, Mason Tender Foremen and Mason Tender Assistant Foremen. Contributions to the Training Program shall be used for the purpose of providing education and training in general construction skills, medical awareness courses, the handling of asbestos and hazardous waste and materials, New York City Fire Department Certificate of Fitness courses, and such other purposes as may be contained in the Fund Plan. It is the intention of the parties that no contributions shall be required on the premium portion of wages.

**Section 8.—**

Effective for the period July 1, 2001 to December 31, 2001, and subject to the Union's right to allocate/reallocate future increases as provided in Section 1 of this Article, the Employer shall pay weekly to the authorized agent of the New York State Laborers-Employers Cooperation and Education Trust Fund \$0.10 per hour for all hours worked by

Mason Tenders, Mason Tender Foremen and Mason Tender Assistant Foremen. It is the intention of the parties that no contributions shall be required on the premium portion of wages.

Section 9.—

Effective for the period July 1, 2001 to December 31, 2001, and subject to the Union's right to allocate/reallocate future increases as provided in Section 1 of this Article, the Employer shall pay weekly to the authorized agent of the Greater New York Laborers-Employers Cooperation and Education Trust Fund \$0.20 per hour for all hours worked by Mason Tenders, Mason Tender Foremen and Mason Tender Assistant Foremen. It is the intention of the parties that no contributions shall be required on the premium portion of wages.

Section 10.—

Effective for the period July 1, 2001 to December 31, 2001, and subject to the Union's right to allocate/reallocate future increases as provided in Section 1 of this Article, the Employer shall pay weekly to the authorized agent of the New York State Health and Safety Trust Fund \$0.05 per hour for all hours worked by Mason Tenders, Mason Tender Foremen and Assistant Foremen. It is the intention of the parties that no contributions shall be required on the premium portion of wages.

Section 11.—

The Employer agrees to deduct and transmit to the Mason Tenders District Council Political Action Committee \$0.10 for each hour worked, or such other amount as the Union may from time to time designate in writing to the Employer, from the wages of those employees who have voluntarily authorized such contributions on the forms provided for that purpose by the Union. These transmittals shall occur weekly, and shall be

accompanied by a list of the names of those employees for whom such deductions have been made, and the amount deducted for each such employee.

**Section 12.—**

Effective July 1, 2001, and subject to the Union's right to allocate/reallocate future increases as provided in Section 1 of this Article, the Employer shall pay monthly to the authorized agent of the Mason Tenders Laborers' Supplementary Fund ("L Fund") \$0.75 per hour for all hours worked by Mason Tenders, Mason Tender Foremen and Mason Tender Assistant Foremen. No contributions shall be required on the premium portion of wages.

**Section 13.—**

The Employer will contribute \$0.20 per hour for each hour of employment of Mason Tenders to the Building Contractors Association Industry Advancement Program, 451 Park Avenue So., New York, New York 10016, and the Union shall have no obligation or responsibility for the collection of these contributions.

**Section 14.—**

All Fringe Benefit Funds provided for by the Agreement shall be jointly administered by Trustees designated equally between employers and the Mason Tenders District Council in accordance with applicable law.

**Section 15.—**

The Employer shall not be required to post and maintain a bond to ensure payment of contributions to the Fringe Benefit Funds set forth in this Article of the Agreement except under the following circumstances: If after an audit of its books and records, the Employer is found to be substantially delinquent, as defined herein, in the payment of fringe benefit contributions to the Fringe Benefit Funds set forth in this Article of the Agreement, the

Employer, for the life of this Agreement, shall be required to post a bond equal to the greater of either i) double the audited delinquencies, or ii) in the following amounts:

An Employer employing 1 to 10 employees	\$15,000.00
An Employer employing 11 to 20 employees	\$50,000.00
An Employer employing over 20 employees	\$75,000.00

Substantially delinquent is defined as any deficiency in the payment of fringe benefit contributions to the Fringe Benefit Funds set forth in this Article of the Agreement in excess of 10% of the fringe benefit contributions paid to the Fringe Benefit Funds set forth in this Article of the Agreement during the period that is the subject of the audit.

Section 16.—

a) The Employer shall make payment of all wages due in lawful currency, except those Employers making payment by check as per Section 17 of this Article. Payments shall be made in sealed envelopes and plainly marked, showing Employer's name and address (printed or stamped), Mason Tender's name, hours worked, amount earned and deductions required by law, dues check-off, and MTDCPAC deductions and the net amount due.

b) Wages shall be due and payable during working hours on Thursday or Friday for work done up to the preceding Tuesday. The day selected as the first payday on any job shall be the designated pay date until the completion of the job. Should Thursday or Friday be a bank holiday, wages shall be due and payable not later than Thursday, for work done up to quitting time the preceding Monday. On jobs where the "Stagger System" is used the Employer shall give due notice to those Mason Tenders affected as to the time the paymaster will be at the job.

c) Where Mason Tenders are not on the job for any reason for which the Employer is not responsible when the Paymaster is paying the Mason Tenders, they may be sent to the main office for their pay but without any allowance for the time spent in going to and from the office; but where the Mason Tenders are not on the job because of any reason for which the Employer is responsible, they will be allowed one hour with pay in going to the office for their pay. Where Mason Tenders are not paid on the specified payday during working hours, they shall be paid straight time for all waiting time at the rate of seven (7) hours per day not to exceed fourteen (14) hours.

d) When Mason Tenders are to be discharged, the Mason Tender must be notified during working hours and must be paid on the job immediately. A violation of this rule entitles a Mason Tender to compensation at the rate provided in Section 1 of this Article for the working time that elapses between the time of discharge and the time the Mason Tender receives such payment. Such payment shall not exceed twenty one (21) hours pay but shall additionally include, in the event of a willful failure to pay, the sum of \$100.00 per day for each and every day from the date of discharge until payment is received by the Mason Tender, including the date of such receipt. Employees must be given termination notice of the State of New York Department of Labor, Division of Placement and Unemployment Insurance, when discharged. If this notice cannot be given to the employee on the job at the time of discharge, the Employer may mail the notice to the employee on the next full business day and this shall be deemed substantial compliance.

e) All Mason Tenders discharged between the hours of 8 A.M. and 12 o'clock noon shall be paid until 12 o'clock noon on the date of discharge. All Mason Tenders

discharged between the hours of 1 P.M. and 4 P.M. shall be paid until 4 P.M. This does not apply to a layoff and does not apply to a Mason Tender who is discharged on the day on which he is first employed. Nor does it apply to Mason Tenders not on the job at starting time.

f) Should work be stopped for any cause beyond the control of either party to this Trade Agreement, no claim for lapsed time shall be made for the time of the unavoidable cessation of work. If the Mason Tenders demand their wages for the working time due, these wages shall be paid within three banking hours after the demand is made upon the Employer.

g) The Union may withdraw Mason Tenders from any job to enforce payment of wages or of contributions to the Trust Funds set forth in this Article of the Agreement. The Union may also withdraw Mason Tenders to enforce the requirement of the Agreement that Union dues, and MTDCPAC contributions be deducted from the wages of Mason Tenders or to enforce payment to the Union of Union dues, and MTDCPAC contributions already deducted from the Wages of Mason Tenders.

h) If Mason Tenders are withdrawn from any job to enforce payment of wages or of contributions to the Trust Funds set forth in this Article of the Agreement, or to enforce the requirement of the Agreement that Union dues be deducted from the wages of Mason Tenders or to enforce payment to the Union of Union dues, and/or MTDC PAC contributions already deducted, the Mason Tenders who are affected by such stoppage of work shall be paid for lost time not exceeding fourteen (14) hours provided that three (3) days' notice of the intention to remove Mason Tenders from a job is given to the Employer by the Union by registered or certified mail.

i) The Employer agrees to and shall be bound by all terms and conditions of the Trust Agreement creating the Trust Funds set forth in this Article of the Agreement and by any rules, regulations or By-Laws adopted by the Trustees of the Funds to regulate said Funds, except to the extent any Funds' document contradicts the terms of this Agreement.

j) Payments by Employers to Trustees of the Trust Funds set forth in this Article of the Agreement shall be accompanied by reports furnished by the Trustees of the respective Funds, in such form and containing such data as the Trustees may from time to time determine in their discretion to be necessary.

#### Section 17.--

Notwithstanding anything herein contained, the Employer shall have the right to make weekly payments of wages by check provided:

- (a) All legal requirements are complied with;
- (b) Delivery of checks to Mason Tenders shall be at least one day preceding a banking day;
- (c) Checks must indicate hours worked and rate of pay in accordance with the provisions of the Agreement;
- (d) The check and the check stub shall bear the imprint and address of the signatory Employer; and
- (e) Checks must reflect the amounts deducted for dues check-off, and MTDC PAC contributions in accordance with the provisions of this Agreement.

In the event that a salary check is not honored by the bank on which it is drawn for any reason whatsoever, then the Mason Tender affected thereby shall be entitled to two (2) days' extra pay for waiting time.

Section 18.--

a) The books and records of the Employer shall be made available at all reasonable times for inspection and audit by the accountants or other representatives of the Trust Funds set forth in this Article of the Agreement, including, without limitation, all payroll sheets, W-2 forms, New York State Employment Reports, Insurance Company Reports and supporting checks, ledgers, general ledger, cash disbursement ledger, vouchers, 1099 forms, evidence of unemployment insurance contributions, payroll tax deductions, disability insurance premiums, certification of workers' compensation coverage, and any other items concerning payroll(s). In addition, the aforementioned books and records of any affiliate, subsidiary, alter ego, joint venture, successor or related company of the Employer shall also be made available at all reasonable times for inspection and audit by the accountants of the Trust Funds set forth in this Article of the Agreement. The Employer shall retain, for a minimum period of six (6) years, payroll and related records necessary for the conduct of a proper audit in order that a duly designated representative of the Trustees may make periodic review to confirm that contributions owed pursuant to this Agreement are paid in full.

b) In the event, after the Trustees have made a reasonable request, the Employer fails to produce its books and records necessary for a proper audit, the Trustees, in their sole discretion, may determine that the Employer's monthly hours subject to contributions for each month of the requested audit period are the highest number of employee hours for any month during the twelve (12) months audited, or during the last twelve months for which reports were filed, whichever monthly number of hours is greater.

Such determination by the Trustees shall constitute presumptive evidence of delinquency. Prior to making such determination, the Trustees shall mail a final seven (7) day written notice to the Employer advising it that such determination shall be made if the Employer does not schedule a prompt audit. Nothing herein shall mean that the Funds relinquish their right to commence legal proceedings to compel an examination of the Employer's books and records for audit.

c) If after an audit of its books and records the Employer is found to be substantially delinquent, as defined herein, in the payment of fringe benefit contributions to the Trust Funds set forth in this Article of the Agreement, the Employer shall bear the imputed cost of the audit as set forth below:

total audited deficiency X number of months audited = imputed cost of audit

150

Substantially delinquent is defined as any deficiency in the payment of fringe benefit contributions to the Trust Funds set forth in this Article of the Agreement in excess of 10% of the fringe benefit contributions paid to the Trust Funds set forth in this Article of the Agreement during the period that is the subject of the audit. In the event the Trust Funds set forth in this Article of the Agreement bring an action to recover the imputed costs of audit, the Employer shall be obligated to pay the reasonable costs and attorneys' fees incurred in bringing said action.

d) In the event the Employer fails to produce the books and records necessary for an audit as set forth in subsection 16(a) of this Article of the Agreement, the Employer agrees to pay a penalty of \$400.00. In the event the Trust Funds set forth in this Article of the Agreement bring an action to obtain an audit of the Employer's books and records, the Employer shall be obligated to pay the reasonable costs and attorneys' fees incurred in bringing said action.

e) If after an audit of its books and records the Employer is found to be delinquent in the payment of fringe benefit contributions to the Trust Funds set forth in this Article of the Agreement then the Employer shall pay, in addition to the delinquent fringe benefit contributions, interest on the unpaid amounts from the date due until the date of payment at the rate prescribed under section 6621 of Title 26 of the United States Code. In the event the Trust Funds set forth in this Article of the Agreement bring an action to recover the interest on delinquent fringe benefit contributions, the Employer shall be obligated to pay the reasonable costs and attorneys' fees incurred in bringing said action.

f) In the event that formal proceedings are instituted before a court of competent jurisdiction by the Trustees of the Trust Funds set forth in this Article of the Agreement to collect delinquent contributions to such Fund, and if such court renders a judgment in favor of such Fund, the Employer shall pay to such Fund, in accordance with the judgment of the court, and in lieu of any other liquidated damages, costs, attorney's fees and/or interest, the following:

- (A) the unpaid contributions.
- (B) interest on unpaid contributions determined by using the rate prescribed under section 6621 of Title 26 of the United States Code.
- (C) interest on the unpaid contributions as and for liquidated damages.
- (D) reasonable attorneys' fees and costs of the action.
- (E) such other legal or equitable relief as the court deems appropriate.

g) The Employer hereby agrees that in the event any payment to the Union or to the Trust Funds set forth in this Article of the Agreement by check or other negotiable instrument results in the check or negotiable instrument being returned without payment

after being duly presented, the Employer shall be liable for additional damages in the amount of \$250.00 to cover such additional costs, charge and expenses. Nothing herein is intended, nor shall be interpreted, to mean that the Trust Funds set forth in this Article of the Agreement or Union waive any other liquidated damages.

Section 19.—

When an employee is sent to work by his Employer to a job outside the region where the fare to and from the job by the customary means of travel exceeds \$3.00 per day, the Employer shall pay the excess as an addition to the contract wage.

Section 20.—

If the Employer requests Mason Tenders to report on any day and such Mason Tenders report for work on that day on starting time, but are not put to work, such Mason Tenders shall be entitled to two (2) hours' pay. However, this payment shall not be made if it is impossible to put such Mason Tenders to work because of weather, lack of materials, or other job conditions which make it impractical for the Employer to work such Mason Tenders.

## ARTICLE VII

### Section 1.—

The Employer shall provide for the exclusive use of the Mason Tenders on each job on which they are doing work, a suitable tool house three (3) square feet minimum per employee in size, properly secured, heated and lit. The keys for the tool house shall be in the exclusive control and possession of the shop steward. The Employer who complies with the requirements of this Section is only responsible, upon submission of proper proof of loss, for loss of clothing due to the burning or forcible entry of the tool house. Such liability shall be limited to a sum not to exceed per man:

\$200.00 for an overcoat;

\$150.00 for clothing, including overalls;

and \$100.00 for shoes

*Where the Employer requires Mason Tenders to wear clothing on the job site identifying the Employer, such clothing shall also identify the Union by appropriate insignias or other suitable markings.*

### Section 2.—

If an emergency arises requiring Mason Tenders to work during inclement weather, foul weather clothing, to include boots, raincoats, and rain hats, shall be furnished without charge to all Mason Tenders.

### Section 3.—

The Employer shall supply all tools on the job required in performing the work covered by this Trade Agreement. It is agreed that the size of square point shovels shall

be Size No. 2 when obtainable but in any case the weight of the shovel shall not exceed five and one-half (5-1/2) pounds.

**Section 4.-**

Mason Tenders on the job shall wear in plain sight, numbered badges (not to exceed one and one-half inches (1-1/2) in diameter) when requested to do so by the Employer; such badges shall be furnished without charge by the Employer.

**Section 5.-**

The Employer, Mason Tenders or the agents of either shall not accept or give directly or indirectly, any rebate on wages, or give or accept gratuities, or give anything of value or extend any favor to any person for the purpose of effecting any change in rate of wages. The Employer or its representatives shall not be permitted to give any advance in wages to Mason Tenders, nor shall they be permitted to lend money to Mason Tenders.

**Section 6.-**

a) In buildings thirteen (13) stories in height or over, an elevator shall be provided to carry Mason Tenders to and from their work during regular hours of employment after the brickwork has reached the twelfth (12th) floor. Consideration shall be given to Mason Tenders working on higher stories if elevator service is not maintained, and a reasonable time shall be allowed to and from work.

b) In order to establish a maximum weight of material and the barrow to be handled by one laborer, it is agreed that the maximum number of bricks to be placed in or upon a wheelbarrow shall be sixty (60). In the case of other materials or building units, it is agreed that the combined weights of the materials and the barrow shall not exceed three hundred (300) pounds. In arriving at weights of various materials, it is agreed that a brick

weighs from 4 to 4-1/2 pounds; 1 bag of Portland cement, 94 pounds; 1 bag of hydrated lime, 50 pounds. The weight of hollow tile and other building units shall be the same as set forth by the manufacturers of these products. Where the weight of palletized materials is 1500 pounds or more it shall be handled by a minimum of two Mason Tenders when moved by jacks. The height of palletized materials shall not exceed 5 feet, 6 inches in height.

c) Any 12 inch cement block raised over 5 feet shall be handled by two Mason Tenders.

#### Section 7.—

No provision of this Agreement shall supersede any Municipal, State or Federal law which imposes more stringent requirements as to wages, hours of work, or as to safety, sanitary or general working conditions than are imposed by this Agreement.

### ARTICLE VIII

#### Section 1.—

a) Where Mason Tenders are employed on a job, the Local Union shall designate a Shop Steward who shall be the second Mason Tender on the job. The Shop Steward shall monitor the Employer's compliance with the terms and conditions of this Agreement. In the event the Shop Steward becomes aware of non-compliance with this Agreement by the Employer, the Shop Steward shall so inform the Local Union that appointed the Shop Steward. The Shop Steward shall retain possession of the key to the tool house and see to it that it is open in ample time at starting time and securely locked at quitting time. The Shop Steward shall perform these duties as shop steward with the least possible inconvenience to the Employer. The Shop Steward is to work as a Mason Tender

and not use the position as Shop Steward to avoid performance of the Shop Steward's duties as a Mason Tender. On overtime work the Shop Steward shall always be the second Mason Tender offered employment for overtime work. If the Shop Steward is discharged, the Shop Steward shall at once be reinstated until the matter is brought before the Union and the decision of the Union shall control, and if any time has been lost, the Shop Steward shall be paid for all lost time up to thirty (30) days only. The Shop Steward is to work up to the completion of the job and shall be the last Mason Tender to be discharged. Where more than one Employer does Mason Tender work on a job site, each Employer shall employ Mason Tenders exclusively to perform the work and each Employer shall employ Mason Tenders Shop Stewards. The Union shall have the right to remove and replace any Shop Steward.

b) The term "Shop Steward" as used in this Agreement shall mean those Mason Tenders who have been trained and certified by the Union to serve as shop stewards. The Employer may request an individual who is certified as a Shop Steward by the Union, to be moved from one job to another with permission of the Union. This permission shall not be unreasonably denied.

#### Section 2.—

The Business Agent, Business Manager or other designated representative of the Union shall have the right to visit and go upon the Employer's jobs during working hours and said person shall not be interfered with while making such visits.

#### Section 3.—

The Employer may select individuals to serve as a Mason Tender Foreman and Mason Tender Assistant Foremen. The Employer shall select whomever the Employer chooses for the positions of Mason Tender Foreman and Mason Tender Assistant

Foremen without regard to the provisions of Article III, Section 2 of this Agreement. The Mason Tenders Foreman may be the first Mason Tender hired by the Employer. The Employer may hire a Mason Tender Assistant Foreman in the event there are more than eight Mason Tenders working on the job site. The ratio of Mason Tender Assistant Foremen to Mason Tenders shall not exceed one Mason Tender Assistant Foreman to eight Mason Tenders on any job site. A Mason Tender foreman shall be required on all jobs where eight or more Mason Tenders are employed. Such foreman shall be representative of the Employer and shall be in direct charge of the Mason Tenders on the job, but shall not perform the work of a Mason Tender. All Mason Tender Foremen shall be paid a weekly salary which shall not be less than \$35.00 per day above the prescribed rate for Mason Tenders in this Agreement. Mason Tender Assistant Foremen shall be paid a weekly salary which shall not be less than \$25.00 per day above the prescribed rate for Mason Tenders in this Agreement. The Mason Tenders Foreman shall take his orders from the bricklayers' foreman on the job.

## ARTICLE IX

### Section 1.—

The Employer guarantees that there will be no lockouts for any reason during the term of this Agreement and the Union guarantees that there will be no strikes during the term of this Agreement except:

a) Where the Employer, at any job site, contracts or subcontracts work covered by this Agreement to any other person, firm, partnership, corporation or joint venture that is not bound by an Agreement with the Union.

b) Where any of the workers engaged on a construction job perform work covered by this Agreement, including loading materials in building supply yards within the regions defined in Article II and unloading at the point of construction, without receiving compensation equivalent to that provided for Mason Tenders under this Agreement.

c) When the Union concludes that the Mason Tenders on any job have not been paid, are being paid less than the rate of wages prescribed in this Agreement, or the Employer is in arrears on fringe benefit contributions payable to the Trust Funds set forth in Article VI of the Agreement or in the remittance of dues checkoffs to the Union as prescribed in this Agreement or in any modification of this Agreement, as hereinafter provided, provided that twenty-four hours' written notice is delivered to the Association and the Employer at the last provided address for such entities.

d) When the Union concludes that the Employer has failed to post or maintain a bond, or has failed to allow access to its books and records as required under the terms of this Agreement.

#### Section 2.—

It shall not be a violation of this Agreement or cause for discharge or disciplinary action for an employee to refuse to enter upon any job site involved in a primary labor dispute, or refuse to cross or work behind a lawful primary picket line established by any union.

### ARTICLE X

#### Section 1.—

Except as herein otherwise provided in Article IX of this Agreement and except claims, disputes and demands arising out of the Employer's wage or fringe benefit

contribution obligations set forth in Article VI of this Agreement or disputes concerning the termination, extension or modification of this Agreement as set forth in Article XII of this Agreement, all complaints, disputes or grievances arising between the parties hereto involving questions of interpretation or application of any clause of this Agreement, or any acts, conduct or relations between the parties or their respective members or employees, directly or indirectly shall be resolved in accordance with the procedure set forth in the balance of this Article.

**Section 2.—**

The steps listed below shall be followed in sequential order:

**Step 1:** The Employer or his representative shall meet with the representative of the Union, and attempt to adjust the grievance between them on a job-level basis as promptly as possible. The parties shall endeavor to meet within 48 hours of the time the dispute becomes known to them. If the parties at this step cannot resolve the grievance within fifteen days after becoming aware of the dispute, either party may notify the other party involved in writing, that it invokes Step 2.

**Step 2:** Upon receipt of notification that the grievance cannot be settled in the manner prescribed in Step 1, the complaint, dispute or grievance shall be submitted in writing by the party hereto claiming to be aggrieved to the other party.

**Step 3:** If a complaint, dispute or grievance shall not have been settled through the foregoing procedure, then either party may within thirty days of the submission of the dispute to Step 2, give the other party notice of its desire to submit the complaint, dispute or grievance to Arbitration. William DiCindio, Arthur Regal, and Janet McCeneany shall serve as arbitrators in successive disputes which the parties have been unable to resolve in Steps 1 or 2, and shall serve in the order they herein appear. The arbitrators will

be chosen in rotating order to hear such disputes and shall make dates available promptly to conduct such hearings. The Arbitrator will follow and be bound by the rules of procedure adopted by the American Arbitration Association.

The Arbitrator shall fix a time and a place in New York, New York for a hearing upon reasonable notice to each party. After such hearing the Arbitrator shall promptly render a decision which shall be binding upon both parties but the Arbitrator shall have no power to render a decision which adds to, subtracts from or modifies this Agreement; the decision shall be confined to the meaning of the contract provision which gave rise to the dispute.

The parties to the Arbitration shall bear equally the expenses of the Arbitrator, the rental, if any, of the place of arbitration, and the cost, if deemed necessary by either party, of court reporting and/or translation services. All other expenses attendant to arbitration will be borne by the party incurring them, including the expenses of any witnesses call by such party.

## ARTICLE XI

### Section 1.--

If, within the jurisdiction of this Agreement, the Union enters into any agreement with an independent employer performing work set forth in Article IV of this Agreement which provides more favorable terms or conditions of employment to such independent employer when performing work set forth in Article IV than are provided for in this Agreement, then the Union hereby authorizes that upon written notice from the Employer to the Union invoking this provision and referencing the job site to which the more favorable terms would apply, such more favorable working conditions, as well as any related terms or conditions that are more favorable to the Union and/or employees, be incorporated in this

Agreement specifically with respect to the work being performed by said independent employer. This Section does not apply to any site specific changes to terms and conditions that are provided for in this Agreement or any other collective bargaining agreement entered into by the Union.

Section 2.—

It is further agreed by and between the parties hereto that if any Federal or State Court shall at any time decide that any clause or clauses of this Agreement is or are void or illegal, such decisions shall not invalidate the other portions of this Agreement, but such clause shall be stricken out and the remaining portion of this Agreement shall be considered binding between the parties hereto. Nothing contained in this Agreement shall be construed to deprive any one or more individual Mason Tenders from pursuing whatever civil or criminal remedies they may have under the law for the collection of their wages, or any part thereof.

Any provisions of the Agreement hereinabove mentioned which provide for Union security or employment in a manner and to an extent prohibited by any law or the determination of any Governmental Board or Agency, shall be and hereby are of no force or effect during the term of any such prohibition. It is understood and agreed, however, that if any of the provisions of the Agreement which are hereby declared to be of no force or effect because of restrictions imposed by laws is or are determined either by Act of Congress or other legislative enactment or by a decision of the Court of highest recourse to be legal or permissible, then any such provision of the said Agreement shall immediately become and remain effective during the remainder of the term of this Agreement. The Union reserves the right to re-negotiate any of the provisions of the Agreement which may be of no force or effect.

### Section 3.--

The Association agrees that within forty-eight hours after the execution of this Agreement, it will submit to the Union a schedule setting forth in full each member of the Association, giving the name and address. When the member of the Association is doing business under a trade name, the name of the principal shall also be given. The Association further agrees that it will immediately notify the Union in writing of any change in its membership, setting forth the names and addresses of any new members of the Association, and setting forth the names and addresses of those members which may have dropped out or been suspended from the Association.

The Employer, whether as an individual, partner, or employee of a partnership, or as an officer, director, stockholder or employee of a corporation agrees to be remain bound by the terms and conditions of this Agreement although doing business as an individual under another trade name, or as a partner or employee of another partnership, or as an officer, director, stockholder or employee of another corporation or as a joint venturer.

### Section 4.--

If the Employer or any of the Employer's owners or principals forms or acquires by purchase, merger or otherwise, an interest, whether by ownership, stock, equitable or managerial, in a firm, partnership, corporation or joint venture employing Mason Tenders to perform bargaining unit work as defined in Article IV of this Agreement, said firm, partnership, corporation or joint venture shall be bound by and considered signatory to this Agreement and the Employer shall assume the obligation of such firm, partnership, corporation or joint venture under this Agreement and such firm, partnership, corporation or joint venture shall assume the obligations of the Employer under this Agreement.

**Section 5.—**

The Association and the Union agree that their efforts will be employed in the public interest to increase production and reduce costs by maintaining maximum mandate output, and to use all machinery, tools, appliances, or methods which may be practical.

**Section 6.—**

The Union shall have the option to terminate this Agreement with the Building Contractors Association, Inc. should the Association merge, join, consolidate or combine with any other employer, group, organization or association.

**Section 7.—**

The Union and Association shall establish a BCA-MTDC Advisory Committee which will consist of no more than three (3) representatives designated by the Union and three (3) representatives designated by the Association. Such Committee shall meet periodically. The purposes of the Advisory Committee will to discuss the application of this Agreement to issues that may arise and to develop suggested improvements for consideration by the collective bargaining parties.

**Section 8.—**

This Agreement shall be binding on the parties, regardless of any change of name by the Mason Tenders District Council of Greater New York or changes in the composition of its constituent local unions. This Agreement shall be enforceable by the Association, the Mason Tenders District Council of Greater New York, its successor, the Trust Funds set forth in Article VI of the Agreement, and any constituent local so authorized by the Mason Tenders District Council of Greater New York or its successor.


## ARTICLE XII

This Agreement shall become effective and binding upon the parties hereto on the 1st day of July, 2001, and remain in effect through June 30, 2006, and shall renew from year to year thereafter unless either party hereto shall give written notice to the other of its desire to modify, amend, or terminate this Agreement on its expiration date. Such notice must be given in writing by certified mail, postage prepaid, at least sixty (60) days, but not more than ninety (90) days, before the expiration date of this Agreement. In the event one of the parties to this Agreement gives written notice of its desire to modify or amend this Agreement pursuant to this Article, the conditions established by this Agreement shall continue in effect during negotiations for a new Agreement.

In such cases of an Employer's withdrawal, resignation, suspension or termination from membership in the BCA, such Employer and its principal officer agrees, during the terms of this Agreement, to be bound by the terms of the collective bargaining agreement between the Union and independent contractors (referred to hereinafter as the "Independent Agreement") then in effect, which shall supersede any conflicting or lesser provisions. Copies of the Independent Agreement have been furnished to the BCA, and shall be furnished by the Union to the Employer signatory to this Agreement upon request.

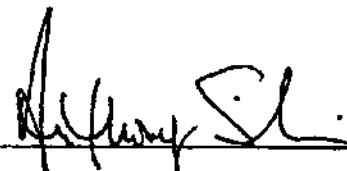
Signed by both parties hereto as of the 1st day of July, 2001 at New York, New York.

**For The Building Contractors  
Association, Inc.**

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

Paul O'Brien, Managing Director

**For The Mason Tenders District  
Council of Greater New York**

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

Anthony Silveri, Business Manager



# MASON TENDERS DISTRICT COUNCIL

## OF GREATER NEW YORK

32 WEST 18TH STREET - 7TH FLOOR

NEW YORK, NY 10011-4612

Tel: (212) 675-4665 Fax: (212) 675-5699

### Wage and Fringe Benefit Rates Local 79 Laborers

## July 1, 2002 to December 31, 2002

BCA	JOURNEYMEN	APPRENTICES			
		1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year	4 <sup>th</sup> Year
Wage Rate	\$26.55	\$15.80	\$16.80	\$18.30	\$20.80
Welfare Fund	2.95	2.95	2.95	2.95	2.95
Pension Fund	4.82	1.35	1.35	1.35	1.35
Annuity Fund	5.00	2.45	2.45	2.45	2.45
Training Fund	.32	.25	.25	.25	.25
"L" Account	1.00	1.00	1.00	1.00	1.00
Greater New York LECET	.20	.20	.20	.20	.20
New York State LECET	.10	.00	.00	.00	.00
New York State Health & Safety	.05	.00	.00	.00	.00
BCA IAP	.20	.00	.00	.00	.00
After tax hourly wage deductions (already included in wage):					
Dues Check-off	1.10	1.10	1.10	1.10	1.10
Political Action Committee	.10	.10	.10	.10	.10
Total after-tax wage deductions:	1.20	1.20	1.20	1.20	1.20

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