

CEMENT MASONS PENSION PLAN
OF LOCAL NO. 165

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Domestic Relations Order Procedures

The Cement Masons Pension Fund of Local No. 165 (“Fund”) is a collectively bargained tax-qualified pension trust fund maintained under Section 302(c), *et seq.*, of the Labor Management Relations Act of 1947, as amended (“Taft-Hartley Act”), and the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). The Fund’s Board of Trustees (“Trustees”) have established and maintain the Construction Workers Pension Trust Fund – Lake County and Vicinity Pension Plan (“Plan”) to provide retirement and related benefits to Plan participants and beneficiaries.

ERISA Section 206(d) generally provides that benefits payable under a qualified pension plan may not be assigned or alienated. An exception to this general rule is provided in the case of a “Qualified Domestic Relations Order,” which is defined in ERISA Section 206(d)(3). The criteria for determining whether an Order is “qualified” are set forth in ERISA Section 206(d)(3). The Fund’s Trustees have adopted these Domestic Relations Order Procedures to ensure that the Fund will comply with ERISA Section 206(d)(3) and to advise the parties to a domestic relations case and their attorneys how the Fund will process Domestic Relations Orders.

1. **Types of Orders.** A Domestic Relations Order is any court order or administrative order that relates to marital property rights or the provision of child support, alimony or maintenance, and which gives the spouse, former spouse or child of the participant the right to a part or all of the participant’s pension benefit. A spouse, former spouse or child of a Plan participant who will receive benefits directly from the Plan is referred to as an “Alternate Payee.” Except as otherwise noted, a proposed Domestic Relations Order is treated the same as an entered Order for purposes of these Procedures and the term “Order” refers to both entered Orders and proposed Orders.

2. **Receipt of Orders.** Each Order shall be processed upon receipt by the Fund office. If the pension benefit to which the Order applies is in pay status, that portion of the benefit which the Order seeks to assign shall be suspended in accordance with the provisions of paragraph 5, below.

3. **Acknowledgment of Orders.** The Fund office will send the participant and the proposed Alternate Payee a letter acknowledging receipt of the Order. That letter will advise that a copy of these Procedures will be provided upon request. The letter of acknowledgment will be sent to the parties’ attorneys if the names and addresses of the attorneys are known; otherwise, the letter will be sent to the participant at his/her last known address and the Alternate Payee at the address shown in the Order. Any party not represented by an attorney may designate, in

writing, another person as his/her representative, in which case the Fund office will also send any notices under these Procedures to the representative.

4. **Notice of “Qualified” Status.** The Fund will determine, based on the requirements of ERISA Section 206(d)(3), if the Order is “qualified” under that statute. The Trustees or the Administrator may seek an opinion from Fund Counsel on any issue relating to the interpretation of an Order or the “qualified” status of an Order. An Order that is “qualified” is a Qualified Domestic Relations Order (“QDRO”). After the Fund has made its determination, Fund Counsel shall send a letter to all parties, on behalf of the Trustees, advising whether the Order is or is not “qualified.” If the Order is not “qualified,” the letter will explain the reasons for that determination, with specific reference to the legal requirements which the Order does not satisfy, or, if applicable, the Plan requirements which the Order does not satisfy. An Order which is determined to be “not qualified” may be revised and resubmitted for further review. When an Order is found “qualified,” the letter shall advise all parties, with reasonable specificity, regarding the amount to be paid to the Alternate Payee and the date such payments are to begin. If a party disagrees with the Trustees’ determination of an Order’s “qualified” status or the Fund’s interpretation of the Order, that party may submit a written request for reconsideration by the Trustees.

5. **Withholding of Plan Benefits Pending Determination of QDRO.** If a participant’s pension benefit is in pay status as of the date an Order is received, or if a participant’s pension benefit goes into pay status before a determination has been made regarding the “qualified” status of an Order, and if the Order has been entered by the Court (as distinct from a proposed Order), the Fund shall withhold from the participant’s pension benefit that portion of the benefit that the Order seeks to assign to the Alternate Payee. The Fund office shall advise the parties in writing of such withholding. If the amount payable to the Alternate Payee under the Order is not ascertainable, the Fund shall withhold the full amount of the participant’s pension benefit. No amount shall be withheld under this paragraph beyond the 18-month period commencing when the first payment was withheld. If, within the 18-month maximum withholding period, the Trustees determine that the Order (or a later modification of it) is “qualified,” the Fund will release to the Alternate Payee his/her portion of the pension benefit, retroactive to the date the withholding began, provided that the Fund receives a certified copy of the final entered Order.

6. **Certified Copy of Order Required.** Although the Fund will make a determination of the “qualified” status of any Order, the Fund will not commence payments to an Alternate Payee until the Fund has received a certified copy of an Order that the Fund has determined to be a QDRO. The Alternate Payee is responsible for furnishing the certified copy of the QDRO unless the Fund office has received a certified copy from another source. Except as otherwise provided in paragraph 5, above, the Fund will not make payments to an Alternate Payee for any period prior to receipt of a certified copy of an Order that is found “qualified.”

7. **Form of QDRO.** Upon request, the Pension Fund will provide any party with a sample QDRO. The Pension Fund does **not** require the parties to follow the format of the sample QDRO. However, if used properly, the sample QDRO will usually be found “qualified” because the format avoids the most common errors. Whether or not the sample QDRO is used, the Pension Fund will honor any Order that is found “qualified” in accordance with ERISA

Section 206(d)(3). Attorneys who are drafting an Order should be aware of the manner in which Plan benefits can be paid (see paragraph 8, below) and should note the following:

(a) The Order must correctly identify the Pension Fund. The Fund's name is the "Cement Masons Pension Fund of Local No. 165." The Trustees are both the Plan Sponsor and Plan Administrator, although an Order is not required to name the Plan Sponsor or Plan Administrator.

(b) The Fund has no interest in how a participant's pension benefits are divided by a QDRO, so long as the combined benefits payable to the participant and to the Alternate Payee do not exceed the value of the participant's pension benefit. The Fund's sole concern is that the manner of division of the pension benefit be unambiguous. If a QDRO defines the "marital portion" of the pension benefit as benefits accrued between two specified dates (e.g., the date of marriage and the date of dissolution), such a provision is comprehensible to the Fund. If a QDRO employs a formula (e.g., months of participation while married divided by total months of participation as of the date of dissolution), please note that pension accruals are measured in Pension Credits and not by months or years. A formula is more comprehensible to the Fund if it uses Pension Credits, rather than a unit of time.

(c) An Order should include the names and addresses of all parties. The parties' dates of birth and social security numbers need not be included in the QDRO and, as an Order may be a public record, the full social security number should not be shown. However, social security numbers and dates of birth must be provided to the Fund office. This is often done by an Addendum to the Order which is not filed with the Court.

8. Plan Design.

(a) The Plan is a "defined benefit pension plan" that pays benefits in the form of an annuity for the lifetime of the participant. The Plan is not a "defined contribution" or "individual account" plan under which money is accumulated in separate accounts, or in which participants have a specific ownership interest.

(b) If the actuarial value of a pension benefit is \$1,000 or less, it will be paid in the form of a lump sum. If the actuarial present value of a pension benefit is between \$1,000 and \$5,000, the participant may elect an annuity or a lump sum.

(c) Normal retirement age under the Plan is 65. The earliest retirement age is 55. In order to qualify for early retirement, a participant must have at least 10 years of Credited Service. The Plan has no provision that allows payment to an Alternate Payee prior to the participant's attainment of earliest retirement age.

(d) The Plan permits payment to an Alternate Payee in the form of an annuity for his/her lifetime, but this provision is limited to an Alternate Payee who is the spouse or former spouse of the participant. When an Alternate Payee receives a life annuity, independent of the

participant's pension benefit, this is referred to as a division of the pension benefit under the "separate interest" approach. When an Alternate Payee does not receive a separate life annuity but simply receives part of or all of the participant's pension benefit, if and when the participant's pension benefit is payable, that form of division is referred to as the "shared payment" approach. These terms ("separate interest approach" and "shared payment approach") are further explained in a U.S. Department of Labor, Employee Benefits Security Administration publication, "QDROs: The Division of Pensions Through Qualified Domestic Relations Orders" (1997). This booklet is available without charge from EBSA at 1-866-444-3272, or on the Internet at <http://www.dol.gov/ebsa/Publications/qdros.html>.

(e) The Plan provides a Qualified Pre-retirement Survivor Annuity ("QPSA"), which is a pre-retirement death benefit, and a Qualified Joint and Survivor Annuity ("QJSA"), which is a form of pension that provides a post-retirement death benefit to the participant's surviving spouse. A QDRO can designate a former spouse as a "surviving spouse" for purposes of the QPSA, the QJSA, or both. A QDRO that gives a former spouse survivorship rights under the QJSA or QPSA should specify whether the designation applies to all accrued pension benefits or only to that portion of the pension benefit which was earned during the parties' marriage.

(f) If a QDRO provides that the Alternate Payee is to be paid in the form of a life annuity (this is the "separate interest" approach, referred to above), then, once that annuity is in pay status, the participant's death will not affect the Alternate Payee's continued receipt of that benefit. For this reason, it is usually not necessary to designate the Alternate Payee as a "surviving spouse" for purposes of the QJSA in a QDRO that adopts the "separate interest" approach and such a designation often result in conflicting terms that cause the Order to be "not qualified."

(g) A QDRO cannot require the Fund to pay the Alternate Payee's benefit in the form of a joint and survivor annuity, where the joint annuitants are the Alternate Payee and his/her subsequent spouse.

(h) If a participant's pension benefit is already in pay status as of the date a QDRO is received, and if the participant properly waived the QJSA at the time the pension benefit became effective, then the QDRO's designation of a former spouse as a "surviving spouse" is ineffective because the survivor benefits have already been waived.

(i) If a participant's pension benefit is already in pay status as of the date a QDRO is received, the QDRO can only divide the pension benefit under the "shared payment" approach. This is because, once the Plan begins making pension benefit payments to a participant, the form of his/her pension benefit payments is fixed and any amount that is subsequently found to be due an Alternate Payee cannot be paid in a form different from the form in which the pension benefit is being paid.

(j) The foregoing paragraphs are intended to assist attorneys in drafting Orders. They describe the general structure of the Plan but are not intended to and do not summarize all

available forms of pension benefits or the eligibility requirements for Plan benefits. On written request, the Fund will provide a party with a copy of the Plan's Summary Plan Description booklet and/or the Plan of Benefits. On written request, the Fund will also provide written information on the amount of a participant's accrued pension benefit.