

# **ACI Foundation Bylaws**

Approved by the ACI Board of Direction on October 27, 2016

## **Article I - Purpose**

### Section 1. Purpose.

The purpose of ACI Foundation (the “Foundation”), a wholly owned subsidiary of American Concrete Institute, a Michigan nonprofit corporation (“ACI”), is to exclusively, directly or through the Foundation’s Committees, receive, administer and expend funds for educational, research, scientific, and charitable purposes related to concrete as contemplated by Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or corresponding subsequent law (the “Code”), in order to increase knowledge and understanding of concrete materials and to support programs that improve concrete design and construction. Further, the Foundation may support programs that have applicability to other materials and their design and construction as long as a substantial part of the program relates to concrete. In carrying out this purpose, the Foundation will:

- a) Identify, support, and encourage basic and applied research on materials, design, construction, and applications;
- b) Report and disseminate research results;
- c) Support programs that facilitate the interaction between practitioners, educators, researchers, decision makers, and the public;
- d) Establish fellowships and scholarships for students with interest in any concrete-related field; and
- e) Support other special projects of ACI which cannot be undertaken by ACI utilizing its regular budgeted financial resources.

## **Article II – Board and Officers**

### Section 1. Board and Officers Defined.

#### (a) Board of Trustees

The term “Board” is defined in the Michigan Nonprofit Corporation Act, as amended (the “Act”), and is referenced interchangeably hereafter as either the “Board” or the “Board of Trustees.” The term “Trustee” or “Trustees” means a member or members, respectively, of the Board of Trustees.

The Board of Trustees shall consist of nine voting Trustees; six (6) of the voting Trustee positions shall be determined by the ACI Board of Direction (“ACI Board”), two (2) of the voting Trustee positions shall be the two Vice Presidents of ACI, and the remaining one (1) voting Trustee position shall be the ACI Executive Vice President. With regard to the six (6) voting Trustee positions determined by the ACI Board, the existing Board will nominate individuals to such Trustee positions.

The President of the Foundation (“President”) and the staff liaison to the ACI Financial Advisory Committee shall each be a member of the Board, without vote.

(b) Officers

The Officers of the Foundation shall be a Chair, President, Secretary and Treasurer.

The staff liaison to the ACI Financial Advisory Committee shall serve as Treasurer of the Foundation.

The President and Secretary of the Foundation shall be the same individual and shall be employed by ACI and shall be mutually determined by the ACI Board and the Board of Trustees.

The Chair shall be selected by the Board from among the six (6) ACI Board approved voting Trustee positions. In the absence of the Chair at any Board or Member meeting, the Trustees shall appoint an interim Chair for such meeting.

(c) Terms of Office and Term Limits

The term of office of the Chair shall be 1 year, and the Chair shall not serve more than two consecutive 1-year terms. With regard to the six (6) voting Trustee positions determined by the ACI Board, the term of office shall be for 3 years, with two Trustees approved each year; provided, however, that the initial six (6) voting Trustee positions may be appointed by the ACI Board for such duration as the ACI Board sees fit to allow for appropriately staggered terms; thereafter all six (6) voting Trustee positions shall have a 3-year term); such Trustees shall not serve more than two consecutive 3-year terms. The term of office of each other Officer and Trustee position shall be indefinite, until a successor is elected or appointed and qualified in accordance with these Bylaws and the Act.

Each Officer and Trustee shall hold office for the term for which he or she is elected or appointed and until his or her successor is elected or appointed and qualified, or until his or her earlier resignation or removal, in accordance with these Bylaws and the Act.

The term of each Officer and Trustee position shall begin immediately upon the election or appointment of such position. A year is here construed as the period between the approval and appointment at two successive spring conventions of ACI.

Section 2. Powers of the Board of Trustees.

Except as specifically provided in the Foundation's Articles of Incorporation ("Articles") or these Bylaws, all rights, powers, duties and responsibilities relative to the management and control of the Foundation's property, activities and affairs are vested in the Board and the Board shall have general supervision of the affairs of the Foundation. In addition to the power and authority expressly conferred upon it by these Bylaws and the Articles, the Board may take any lawful action on behalf of the Foundation which is not by law or by the Articles or these Bylaws required to be taken by some other party. In particular, and without limitation, the Board shall have the power, whenever its general interests require the same, to borrow money and issue its promissory note or bond for the repayment thereof with interest, and may in like case mortgage its property as security for its debts or other lawful engagements.

Unless otherwise directed by the Board, all conveyances, contracts and instruments of transfer and assignment shall be specifically approved by the Board and shall be executed on behalf of the

Foundation by such Officers or agents as may be specifically authorized by the Board. Unless otherwise designated by the Board, all Foundation instruments and documents including, but not limited to, checks, drafts, bills of exchange, acceptances, notes or other obligations or orders for the payment of money shall be signed by the President or by such other Officers of the Foundation as from time to time are designated by resolution of the Board.

To the extent authorized or permitted by law, and so far as is consistent with the Articles and these Bylaws, the Board may appoint agents and representatives of the Foundation with such powers and duties as the Board may see fit. No Officer, Trustee or agent of the Foundation shall speak on behalf of the Foundation without authorization by the Board to do so.

The Foundation shall not have any employees, but it may use the employees of other entities.

### Section 3. Powers and Duties of Officers.

#### (a) Chair

The Chair shall preside at meetings of the Board and meetings of the membership. The Chair shall also perform such other duties as may be specified by the Board from time to time as do not conflict with the duties of the President.

#### (b) President/Secretary

The President/Secretary shall have general supervision over the business and operations of the Foundation, subject, however, to the control of the Board. The President/Secretary shall sign, execute and acknowledge in the name of the Foundation, deeds, mortgages, bonds, contracts, and other instruments authorized by the Board and in general perform all duties incident to the office of President and Secretary and such duties as from time to time may be assigned to such position by the Board. The President/Secretary shall attend and keep minutes of all meetings of the Board.

#### (c) Treasurer

The Treasurer shall have charge of all receipts and disbursements of the Foundation and shall have or provide for the custody of its funds and securities. The Treasurer shall have all the powers customarily invested in a financial officer and shall have such other powers and perform such other duties as may be assigned from time to time by the Board.

### Section 4. Nominations for Trustee and Officer Positions.

The Board of Trustees shall select nominees for those Trustee and Officer positions in which the Board determines or is entitled to suggest nominees, pursuant to these Bylaws. Before March 1 of each year the Board shall report to the President the candidates nominated for such Officer and Trustee positions.

Candidates for Trustee shall be selected with due regard for diversity of professional and technical representation. Candidates for the office of Chair shall have had prior service on the Board of Trustees.

## Section 5. Vacatur and Replacement of Trustee and Officer Positions.

### (a) Vacancies

A vacancy in the office of President/Secretary shall be filled for the unexpired term by the ACI Executive Vice President with input from the Board. A vacancy in the office of Treasurer shall be filled for the unexpired term by the ACI Executive Vice President. A vacancy in the office of Chair shall be filled for the unexpired term by nomination by the Board and subsequent approval by the ACI Board. A vacancy in any other Officer or Trustee position shall be filled for the unexpired term by nomination by the current Trustees and approval by the ACI Board.

### (b) Vacatur and Replacement

In the event that any Officer or Trustee of the Foundation is unable to discharge the duties of his or her position or has neglected to perform the duties of his or her position, the ACI Board may declare the position vacant. The Board of Trustees may, in its reasonable discretion, recommend to the ACI Board that an Officer or Trustee position should be declared vacant. In particular, and without limitation, any Trustee who shall have unexcused absences from two consecutive meetings of the Board shall automatically vacate the seat on the Board and the vacancy shall be filled as provided by these Bylaws; provided however, the Board shall have the authority by an affirmative majority vote of the Trustees present and voting to recommend to the ACI Board that a Trustee's absence should be excused. The approval or dismissal of Trustees is a power reserved to the ACI Board.

## **Article III – Committees**

The Board may designate additional operational committees and assign to them such duties and powers as the Board may provide to carry out the programs and purposes of the Foundation. Chairpersons and members of such committees shall be appointed by the Board or its designee. Membership on such committees shall only include Distinguished Volunteers (as defined and described below). Any committee of the Foundation shall exercise such powers and perform such duties as are stated in these Bylaws for such committee or as the Board may, from time to time, authorize.

## **Article IV – Member**

### Section 1. Member

ACI is the sole Member of the Foundation, as the term “Member” is defined and used in the Act.

## **Article V - Meetings**

### Section 1. Board Meetings

The Board of Trustees shall meet at least twice each year at the time and place fixed by the Board. At every meeting of the Board, each voting member of the Board shall be entitled to one vote. All questions shall be decided by the majority of the voting members of the Board present, except as may be specifically provided by these Bylaws or the Act.

Any action required or permitted to be taken at a meeting of the Board or a committee thereof may be taken without a meeting if, before or after the action, all voting members of the Board or of the committee consent to the action in writing or by electronic transmission. The written consents shall be filed with the minutes of the proceedings of the Board or the committee. The consent has the same effect as a vote of the Board or the committee for all purposes.

## Section 2. Special Meetings

Special meetings of the Board of Trustees may be called at any time by the Board of Trustees, the Chair, or by the Secretary upon receipt of a request signed by at least one-half of the voting members of the Board.

## Section 3. Quorum.

At any meeting of the Board of Trustees a majority of the voting members of the Board shall constitute a quorum for all purposes. In the absence of a quorum, a majority of the voting members of the Board present may reschedule the meeting for a date certain. Notice of the rescheduled meeting shall be given pursuant to the terms of these Bylaws and the Act.

# **Article VI – Distinguished Volunteers**

## Section 1. Distinguished Volunteers

The Foundation shall consist of contributing “Distinguished Volunteers,” defined as individuals or organizations that contribute their time, expertise or funding to the Foundation. A person or entity who wishes to become a Distinguished Volunteer must submit a completed registration, containing such information as the Board requires to be included in the Foundation roster as such. Designation as a Distinguished Volunteer is not transferable.

Designation as a Distinguished Volunteer shall be terminated by the death, dissolution, resignation or removal of a Distinguished Volunteer. If a Distinguished Volunteer does not comply with any of the conditions or requirements for remaining as a Distinguished Volunteer as established by these Bylaws or as determined by the Board, the Board may, in its reasonable discretion, terminate such Distinguished Volunteer’s designation and remove such Distinguished Volunteer from the Foundation roster. A Distinguished Volunteer removed from the Foundation roster may thereafter again become a Distinguished Volunteer as permitted by the Board pursuant to these Bylaws.

Trustees shall be Distinguished Volunteers of the Foundation.

## Section 2. Distinguished Volunteer Rights, Benefits and Responsibilities.

A Distinguished Volunteer shall be entitled to those rights, benefits and responsibilities as determined by the Board of Trustees. Provided, however, for the avoidance of doubt, Distinguished Volunteers are not Members of the Foundation and Distinguished Volunteers have no rights granted by the Act to members in a membership corporation.

### Section 3. Distinguished Volunteer Dues.

Distinguished Volunteer dues shall be set by the Board of Trustees and shall be paid in advance by Distinguished Volunteers in accordance with a schedule approved by the Board. The Board may, in its discretion, waive dues for certain Distinguished Volunteers.

### Section 4. Failure to Pay Dues.

A Distinguished Volunteer whose dues remain unpaid for a period of 3 months shall forfeit the privileges of a Distinguished Volunteer and shall be sent notice to this effect by the President. A Distinguished Volunteer whose dues are unpaid for a period of 8 months from their due date shall be stricken from the Foundation roster unless otherwise specifically ordered by the Board. Unless advised otherwise, Distinguished Volunteers may be reinstated upon resumption of payment of dues and payment of all indebtedness to the Foundation other than back dues.

## **Article VII – Rules and Regulations**

### Section 1. Rules and Regulations.

The Board of Trustees may from time to time adopt such rules and regulations as it deems advisable to carry out the business of the Foundation. In the event of any conflict between these Bylaws and such rules and regulations, these Bylaws shall control.

## **Article VIII – Amendments**

### Section 1. Amendments.

These Bylaws and the Articles may be altered or amended or repealed, as applicable, by and only by the ACI Board.

## **Article IX - Dissolution**

### Section 1. Dissolution.

Any dissolution of the Foundation shall require the consent of the ACI Board. In case of dissolution of the Foundation, the Board of Trustees, in accordance with the Act, shall: (i) authorize the payment of all debts of the Foundation, including accruals; and (ii) arrange for the distribution of remaining assets to its sole Member, ACI, if it is then a nonprofit technical professional organization. If ACI is not such an organization, the remaining assets shall be distributed to a professional organization or organizations having similar aims and objectives as the Foundation.

## **Article X – Indemnification**

### Section 1. Claims by Third Parties.

The Foundation may indemnify, if approved by the Board, any person that was or is a party or is threatened to be made a party to a threatened, pending, or completed action, suit, or proceeding,

whether civil, criminal, administrative, or investigative and whether formal or informal, other than an action by or in the right of the Foundation, by reason of the fact that the person is or was a Trustee, officer, non-Trustee volunteer, or agent of the Foundation, or is or was serving at the request of the Foundation as a Trustee, officer, partner, employee, non-Trustee volunteer, or agent of another foreign or domestic corporation, business corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, for expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit, or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Foundation or its Member, and with respect to a criminal action or proceeding, if the person had no reasonable cause to believe that the conduct was unlawful. The termination of an action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner that the person reasonably believed to be in or not opposed to the best interests of the Foundation or its Member and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct was unlawful.

## Section 2. Claims Brought By or In the Right of the Foundation.

The Foundation may indemnify, if approved by the Board, any person that was or is a party or is threatened to be made a party to a threatened, pending, or completed action or suit by or in the right of the Foundation to procure a judgment in its favor by reason of the fact that the person is or was a Trustee, officer, non-Trustee volunteer, or agent of the Foundation, or is or was serving at the request of the Foundation as a Trustee, officer, partner, employee, non-Trustee volunteer, or agent of another foreign or domestic corporation, business corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, for expenses, including attorneys' fees and amounts paid in settlement actually and reasonably incurred by the person in connection with the action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Foundation or its Member. The Foundation shall not indemnify a person for a claim, issue, or matter in which the person is found liable to the Foundation except to the extent authorized under Section 564c of the Act.

## Section 3. Definition of "Agent".

For purposes of Sections 1 and 2, "agent" shall include, but not be limited to, members of Foundation committees, officers, non-trustee volunteers and agents, and all other persons or entities authorized by the Board of Trustees to conduct Foundation programs, provided, however, that no person or entity shall be deemed an agent of the Foundation for purposes of this Section unless acting in good faith, within the scope of their actual authority, in conducting a Foundation program, and only including programs which have been approved or accredited by the Foundation.

## Section 4. Approval of Indemnification.

Whether any person meets the standards for indemnification set forth in this Article (except as otherwise ordered by a court) shall be conclusively determined by (a) the Board of Trustees, by a majority vote of a quorum of the Board consisting of Trustees who are not parties or threatened to be made parties to the action, suit, or proceeding (hereafter "Disinterested Trustees"), or (b) by independent legal counsel in a written opinion if a quorum of Disinterested Trustees so elects or if

a quorum of Disinterested Trustees is not obtainable.

#### Section 5. Advancement of Expenses and Other Indemnification.

The Foundation may advance expenses and indemnify any other person or entity in the manner and to the full extent, and shall have such other rights and powers in connection therewith, as may be permitted to the Foundation under law. Indemnification may be obtained under this Section upon (a) a majority vote of a quorum of the Board consisting of Disinterested Trustees, or (b) by independent legal counsel in a written opinion if a quorum of Disinterested Trustees so elects or if a quorum of Disinterested Trustees is not obtainable.

#### Section 6. Insurance.

The Foundation shall have the power to purchase and maintain insurance on behalf of any person who is or was a Trustee, officer, non-Trustee volunteer, or agent of the Foundation or is or was serving at the request of the Foundation as an officer, partner, Trustee, employee, non-Trustee volunteer, or agent of another foreign or domestic corporation, business corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Foundation would have the power to indemnify him or her against such liability under the provisions of this Article or Michigan law.

#### Section 7. Other Rights of Indemnification.

The indemnification or advancement of expenses provided under this Article is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under the Articles, these Bylaws or a contractual agreement. However, the total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses. The indemnification provided for in this Article continues as to a person who ceases to be a Trustee, officer, employee, non-Trustee volunteer, or agent and shall inure to the benefit of the heirs, executors and administrators of the person.

#### Section 8. Severability.

Each and every paragraph, sentence, term and provision of this Article shall be considered severable in that, in the event a court finds any paragraph, sentence, term or provision to be invalid or unenforceable, the validity and enforceability, operation, or effect of the remaining paragraphs, sentences, terms, or provisions shall not be affected, and this Article shall be construed in all respects as if the invalid or unenforceable matter had been omitted.

### **Article XI - Trade Regulation Policy**

#### Section 1. Trade Regulation Policy.

It shall be the policy of the Foundation to observe strictly, in letter and in spirit, the trade regulation laws of the United States and of the several states, including the body of laws customarily referred

to as the Antitrust Laws of the United States. In pursuance of this policy, the Board of Trustees shall, as appropriate, (i) adopt and publish an Antitrust Policy Statement, (ii) amend the statement from time to time and (iii) take periodic reports from the President as to compliance by the Foundation with such policy.

## **Article XII – Conflicts of Interest Policy**

### Section 1. Conflicts of Interest Policy.

The Board may approve a Conflicts of Interest Policy that establishes policies and procedures for determining when a Trustee, Officer or other person involved with the Foundation has a conflict of interest and which specifies procedures for reviewing, voting upon and performing any contract or transaction with such interested person or with an entity in which such person has an interest. The policies and procedures approved by the Board may be stricter than those set forth in the Act or in these Bylaws.

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