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March 20, 2020

The Honorable Mitch McConnell
United States Senate
Washington, D.C. 20510

The Honorable Chuck Schumer
United States Senate
Washington, D.C. 20510

The Honorable Nancy Pelosi
United States House of Representatives
Washington, D.C. 20515

The Honorable Kevin McCarthy
United States House of Representatives
Washington, D.C. 20515

RE: Congress Must Prioritize Construction Jobs and Markets to Help Mitigate this Pandemic and Ensure our Critical Infrastructure Remains Fully Operational Today and Built for the Challenges of the Future

Dear Leader McConnell, Speaker Pelosi, and Minority Leaders Schumer and McCarthy,

On behalf of the Associated General Contractors of America (AGC), a national construction trade association representing more than 27,000 firms including America's leading general contractors, specialty contractors, service providers, and suppliers, we appreciate your ongoing efforts to address the unprecedented impacts of the novel coronavirus (COVID-19) outbreak on the U.S. economy and the American people. As Congress develops further legislation to expedite recovery efforts, AGC respectfully requests that you take the necessary steps to ensure the construction industry and its markets remain fully operational throughout this crisis and guarantee that the industry can be ready to build for the many challenges that lie ahead.

Specifically, AGC requests that Congress address the following priorities:

- I. Protecting construction employer cash flows so they can pay workers and maintain operations that are essential to our nation's national security, economy, and sustainment of life
- II. Ensuring public construction markets have immediate access to additional funds to build critical infrastructure
- III. Laying the foundation for the long-term recovery of the construction industry and its markets so it can address our future challenges via multi-year infrastructure legislation
- IV. Maintaining the viability of multiemployer pension and health plans on which millions of participants, retirees and contributing employers depend

Below, are AGC's specific policy and program recommendations to fulfill these priorities. Enacting these recommendations will help the more than 700,000 construction businesses, their approximately seven million employees, and our society through this crisis today and address the hurdles we face tomorrow.

I. Protecting Construction Employer Cash Flows So They Can Pay Workers and Maintain Operations that are Essential to our Nation's National Security, Economy, and Sustainment of Life

Many construction companies operate with limited cash reserves because of the capital-intensive nature of their work. The most important and cash-intensive part of any construction company is its employees' wages and benefits. In addition, much of the equity of a construction company is locked up in its equipment and real property. Further, construction companies carry comprehensive and expensive insurance and surety bond policies in order to manage the risks of building. Many construction businesses, even in good economic times, expect at best single-digit profit margins from any project. As such, cash flow is critical to every construction company. To help these companies maintain critical cash flows to avoid mass layoffs and bankruptcy Congress should:

- A. Amend the new employer-fronted emergency paid sick leave and emergency paid family and medical leave mandates created pursuant to H.R. 6201, the *Families First Coronavirus Response Act*, to either shift initial payments for such leave from employers to the federal government, or accelerate, by any means necessary, the process by which employers will be "reimbursed" through the refundable tax credit for providing salaries and benefits under the new paid leave mandates.

Additionally, in the event Congress continues along the same path for these new employer-fronted paid leave mandates, the existing web of federal, state and local paid leave requirements must be addressed in a sensible manner. To do so, AGC recommends that Congress federally preempt, exempt or provide a waiver from these existing paid leave mandates, so employers do not have to decipher how to comply with and administer three different levels of governments' mandates for the same benefits.

- B. Provide sufficient lending authority to the Department of the Treasury and the U.S. Small Business Administration (SBA) to adequately provide liquidity to struggling businesses, and address the cash shortage that many construction firms, both large and small, will face in the coming months.

Immediately providing readily accessible, unsecured credit to construction businesses of all sizes will help ensure they have the cash to pay their workers, rent, and other costs during this crisis. While Congress, Treasury, and the Federal Reserve have recently announced policies to increase the availability of credit to small businesses, these policies need to be expanded to make certain they are comprehensive and that the credit is readily available to all operating construction businesses in the short term as well.

- C. Provide time and money to contractors for losses incurred when public owners, who utilize federal funding, delay or terminate projects as a result of COVID-19-outbreak.

One of the consequences of an economic slowdown can be the delay or temporary closure of projects funded through federal-aid and direct federal construction programs. Disruptions in these projects lead to a myriad of complications, such as: increased costs for both contractors and the federal government, delayed completion dates, inability to bid on additional projects, and decreased competition. In addition to the losses incurred due to project inactivity, contractors face extra costs in shutting down and securing project sites. Construction jobsites require enormous time and expense to mobilize and demobilize the workers, equipment, and materials. AGC strongly advocates against delays or closures of these projects.

Construction firms are already taking necessary steps to ensure the safety and health of their employees in the face of this public health crisis. Given the many precautions already in place, halting construction will do little to protect the health and safety of construction workers. Importantly, keeping projects running will ensure that the many individuals employed through the federal-aid and direct federal construction industry do not miss a paycheck or see a lapse in benefits. However, for projects that are delayed or terminated as a result of the COVID-19 outbreak, AGC requests that the losses incurred by contractors be addressed through financial compensation. Concurrently, AGC is exploring other policy options to protect the industry during this dire time. Cashflow is the oxygen that keeps any construction project functioning. Without oxygen, those entities will begin to wither. As an industry that is dominated and supported by a variety of small businesses, action must be taken to ensure that projects and businesses alike to not wither.

D. Suspend the filing of business returns and the payment of all business taxes to the federal government for the duration of the crisis.

These suspended taxes should include taxes owed for the 2019 Tax Year, estimated payments for 2020, and all payroll tax obligations. When the crisis is over, the repayment of any deferred taxes should be spread out over time.

E. Other critical tax and financial recommendations:

- Amending the Tax Code to, among other items, restore the ability of businesses to carryback any net operating losses against previous year tax payments;
- Suspending the application of the Section 163(j) limitation on interest expense deductions for Tax Year 2020 to avoid penalizing businesses for borrowing during this crisis; and
- Suspending the Section 461(l) loss limitation on pass-through businesses to allow the owners of pass-through businesses to fully deduct any losses they incur this year.

II. Ensuring Public Construction Markets Have Immediate Access to Additional Funds to Build Critical Infrastructure

Infrastructure is essential to the facilitate economic growth, ensure global competitiveness, create American jobs, and support the nation's military and their families. It also affords Americans a good quality of life by enabling them travel to and from work, to conduct business, and to visit family and friends, as well as providing them with essential services such as safe drinking water and medical care, and protecting them against catastrophic events, such as flooding. As such, AGC believes that any further legislation should include investments in, but should not be limited to, the following federal accounts and programs:

- The Highway Trust Fund;
- The Clean Water and Safe Drinking Water State Revolving Funds;
- The Airport Improvement Program; and
- The U.S. Army Corps of Engineers (USACE) Military Construction and Civil Works Programs.

III. Laying the Foundation for the Long-Term Recovery of the Construction Industry and its Markets so it can Address our Future Challenges via Multi-Year Infrastructure Legislation

The construction industry will rely on the long-term certainty provided by multi-year infrastructure legislation to maintain and expand their workforce after the crisis ends. States and other partners will also rely on that certainty to plan and carry out critical projects to rebuild and modernize the nation's infrastructure. Specifically, Congress should enact:

- A multi-year reauthorization of federal highway and transit programs;
- A multi-year reauthorization of the state clean water and drinking water state revolving funds programs;
- Long-term investments in USACE Military Construction and Civil Works Programs; and
- Long-term investments in social infrastructure (e.g., hospitals, medical clinics, and emergency facilities), among other things.

IV. Maintaining the Viability of Multiemployer Pension & Health Plans on which Millions of Participants, Retirees, and Contributing Employers Depend

Multiemployer pension plans as well as health and wellness funds face impending peril as a result of this pandemic and the steps being taken to address it. These financial benefits vehicles are funded through hourly contributions based generated by employee hours worked. As cities and entire states shelter in place, many public and private construction projects are consequently slowing or shutting down. As construction projects slow or

shutter, construction workers lose many or all of these work hours, and, with them, these plans lose the hourly contributions the need to survive.

As such, Congress must intervene now to protect multiemployer pension plans facing insolvency to protect participants, retirees, and contributing employers. Such intervention should include:

- Directing funds to the Pension Benefit Guaranty Corporation (PBGC) to avert millions of participants from losing their retirements and jeopardizing the solvency of thousands of employers;
- Allowing actuarial smoothing to protect the plans that have experienced unexpected losses in recent weeks and would have otherwise been well prepared to weather economic downturn; and
- Authorizing new plan designs, Composite Plans, which are better structured for market downturns while protecting both employers and participants.

Additionally, as noted above, the funding and continuing operational status of health and wellness of funds remains a significant concern as they face this public health crisis. AGC employers contribute to joint labor-management Health and Welfare trusts providing their workers and families medical and other health benefits. Until the unprecedented economic downturn, these plans had strong cash reserves and had never experienced the possibility of failure.

These health and wellness plans must be protected during this pandemic to ensure they are able to operate and cover immediate testing and likely treatment costs associated with the pandemic. To do so, Congress should:

- Authorize COBRA premium assistance; and
- Cover the costs associated with testing, treatment and prescription drugs for needed to address COVID-19 illnesses.

Again, AGC appreciates the bipartisan effort to safeguard the U.S. economy and address the needs of all Americans during this crisis. We look forward to working with you to address the needs of the construction industry as the legislative process moves forward.

Sincerely,

A handwritten signature in cursive script that reads "James V. Christianson". The signature is written in black ink and is positioned to the left of a vertical grey line.

James V. Christianson
Vice President, Government Relations