

MARCH 2011

March

March 3-6

Business Forum &
Convention—Naples, FL

March 9

Day at the Capitol—
Jefferson City, MO

March 16

Monthly Business Mtg.—
Syberg's on Dorsett

March 17

Bloody's, Beer & Breakfast-
Shaw Park

April

April 9

Awards Gala—
Four Seasons Hotel

April 20

Monthly Business Mtg.—
Syberg's on Dorsett

May

May 18

Monthly Business Mtg.—
St. Clare Hospital Exec. Ctr.

June

June 15

Annual ASA BBQ—
Queeny Park

July

July 20

Monthly Business Mtg.—
Helen Fitzgerald's

You can't turn on the news lately without hearing about the union issue in Wisconsin. Protestors are coming out in record numbers, some even sleeping in the Capitol building. Lawmakers are fleeing the state to avoid the vote. No doubt, it's a contentious issue that many feel passionately about. While the Wisconsin issue may be specifically about public employees, we as an industry cannot ignore the fact that unions are coming under heavy scrutiny again, after many years of relative anonymity.

Right here in Missouri, legislation has been introduced that revisits the "right to work" issue. In a nutshell, this type of legislation prohibits labor agreements that require membership in a union and those that require workers to pay for union representation. No matter where you stand on this issue, the major changes proposed could change the way we do business entirely.

Senate Bills 1 and 206, sponsored by Sen. Luann Ridgeway, R-Smithville and co-sponsored by Sen. Chuck Purgason, R-Caulfield had a hearing and were passed by the Senate General Laws Committee earlier this month. To find out more about the Right to Work bills, or to read the full text of these bills, visit www.senate.mo.gov.

Don't be afraid to make your feelings known to your legislators on this important issue. The next step is discussion and a vote on the floor, so it's not too late to express your support or your opposition. Email, call or write them directly and express your opinion – after all, they work for us!

If you have any questions regarding any legislation, please contact our lobbyist, Nikki Strong, at nrstrong@mchsi.com.

Onward and Upward,

Chris Milne
Oreo & Botta Concrete
President - ASA Midwest Council

Syberg's on Dorsett
2430 Old Dorsett Road
Maryland Heights, MO 63043

(Directions: Exit Highway 270 North at the Dorsett exit. Go right and make left onto Old Dorsett Road. This is the old Joe Hannon's location and next to the Quality Inn.)



What matters? Honoring the best matters.

Budrovich would like to congratulate the following customers and friends on being nominated for an ASA Award in 2010.

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- Volk Construction • GS&S • JE Foster • Landco
- RPA Construction • Air Masters • Guarantee Electrical • Kaemmerlen Electric • Kaiser Electric
- Murphy Company • Rock Hill Mechanical
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March Meeting

The March 16th business meeting will be held at Syberg's on Dorsett and feature our Chapter Attorney, Dick Stockenberg with Gallop, Johnson & Neuman, as our speaker. He will speak to us about our current legislative agenda and past victories.

The meeting begins at 5:30 p.m. with BPI starting promptly at 5:45 p.m.

The following general contractors will be discussed at BPI:

- CB&E Construction Group
- Goodwin Brothers
- Gundaker Commercial Group
- Kwame Constructors
- Murray Company

If you would like to add a general to the list for BPI, please come to meeting and fill out a request (they are anonymous) or call Reba at the ASA office and she can add it to the list. Be sure you have filled out your participation agreement for BPI.

Don't forget that we have a library of general contractors' contracts that our contract review committee has available to members. To request a contract, please call Reba. If we don't have it in the library, we can add it to the committee's To Do List.

Meeting Location Changes

We have several changes taking place over the next couple of months in regards to meeting locations.

We are looking for a new south meeting location (due to the fact that the Viking is raising the price and we don't want to pass that increase on to you) and have decided to go to **St. Clare Hospital's Executive Conference Center** in Fenton (Highway 141 & Bowles) for the **May 18th** meeting. They will allow our members to park in the doctor's parking lot and there is a separate entrance that leads directly from the parking lot to the conference center or you can enter the hospital and immediately walk down the staircase

to the conference center. You will not be parading through the hospital or even feel like you are in a hospital.

This WILL NOT be hospital food! They have their own catering department and we will have beverages as usual. We believe that this new facility meets our needs and we want you to try it out and give us your feedback. In addition, there is a great patio area just outside the conference center.

The Annual **BBQ** will be on **June 15**, in lieu of our regular meeting, at **Queeny Park** so plan to have a booth. More information will be sent out soon.

The **July 20th** meeting will be a networking meeting with goals from our 2011-2012 president-elect, A.J. Ford. This meeting will be held at **Helen Fitzgerald's**.

Please mark your calendars and try out our new locations.

Awards Gala

The 18th Annual Awards Gala is Saturday, April 9, 2011 at the Four Seasons Hotel next to Lumiere Casino. Our theme is "An Evening Under the Star."

All voting ballots and safety forms are in and being counted. Winners will be announced at the gala.

We have a piano player during the cocktail reception and Lindbergh Strings during dinner. Plan to stay after the awards and congratulate the "Stars." The Four Seasons has a nice balcony for viewing the Arch and downtown.

Sponsorships are due by March 11. We are again having electronic sponsors run before the gala, during dinner and after the program. There is something for every price range. Slides will be put into a PowerPoint presentation.

WHEN DO LIEN RIGHTS EXPIRE? – IT ALL DEPENDS

BY: RICHARD A. STOCKENBERG,
GALLOP, JOHNSON & NEUMAN

What do Kansas and Connecticut have in common? A passion for basketball, but that is about it. Certainly, they have nothing in common on the issue of when lien rights expire.

To enforce lien rights, claimants must strictly follow statutory requirements. A typical statutory scheme says that a subcontractor's mechanic's lien must be filed within a certain number of days or months after the subcontractor performs its last work on the project.

Since the deadline for filing liens is for the protection of the owner, it is only reasonable to examine the owner's involvement in the timing of the contractor's or subcontractor's last day worked. For example, if a subcontractor whose lien rights have expired returns to the job on its own volition to perform work of a dubious nature, it is easy to conclude that this voluntary work will not extend the contractor's lien right. If on the other hand, a subcontractor returns to the jobsite at the request of the general contractor or owner to perform work, albeit small, that was part of the subcontractor's original scope of work, it should be reasonable to conclude that the lien time has been extended. After all, there is no showing that the subcontractor's entry onto the jobsite to perform work was motivated for the sole purpose of extending its lien time.

The Kansas Rule

In Kansas, a subcontractor must file its mechanic's lien within three months of the last date it furnished labor, materials or equipment for the project. In one case, the subcontractor's lien was not timely filed. The subcontractor returned to the project after submitting its final billing which stated that its work was 100 percent complete. Thereafter, the subcontractor's electricians, over the course of two days, spent 12-1/2 hours at the jobsite. The work performed had not been included in the subcontractor's original scope of work, but it had been orally requested by representatives of

the owner. Because the last work performed was not part of the subcontractor's scope of work and because there was no change order adding this work, the court found it to be gratuitous and it did not extend the subcontractor's time for filing its mechanic's lien. The court did not consider the owner's duty to issue a change order because of its expansion of the subcontractor's scope of work.

The Connecticut Rule

Connecticut statute requires a mechanic's lien to be filed within 90 days of the contractor's cessation of work. In the Connecticut case, the issue was whether the contractor ceased work as of the date of substantial completion, or whether cessation did not occur until the contractor completed some trivial work at the request of the owner. By the time substantial completion had occurred, the owner had fallen behind in payments; thus, the contractor stopped work on the project, but left scaffolding and roofing brackets in place. Thereafter, a new owner requested the contractor to remove the scaffolding and roofing brackets. In this case, the Connecticut Supreme Court ruled that in order for the lien time to begin to run as of the date of substantial completion instead of the date the contractor completed call back work requested by the owner, two conditions must be satisfied: First, the contractor must have unreasonably delayed final completion, and second, services rendered by the contractor after the date of substantial completion must have been furnished at the contractor's initiative, rather than at the owner's request.

Lessons Learned

The decision of the Kansas court may have been different had the court considered the owner's duty to compensate the contractor for the extra work performed at the end of the job. If the work had not been considered gratuitous, the lien would have probably been enforceable. The Connecticut court's reasoning was sound because of the weight given by the court to the request made to the contractor by the owner to return to the jobsite to finish the project. Statutory lien deadlines are for the protection and benefit of the owner, but if the owner is the cause of the contractor or subcontractor returning to the jobsite to finish the job, it is only reasonable that lien time be extended. This rule applies in Missouri. Subcontractors need to avoid the appearance that they are returning to the site for the purpose of extending lien time.



B & W Foundations has been providing St. Louis area contractors with superior poured wall construction for over 38 years. We are a family-owned business that is very proud of the reputation we have built, and have work hard to build and maintain the resources necessary to produce quality foundation work well into the future.

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Operating under the same values, we are excited to announce that we have expanded our organization and now offer flatwork services through our sister company, B & W Concrete, LLC. We now employ a team of professionals with significant flatwork expertise, accomplished in all phases of interior and exterior residential concrete work, as well as unique skills in the coloring and stamping of concrete.

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THANK YOU

to the following member companies who attended the February Meeting:

Air Masters/Gateway Mechanical
American Burglary & Fire
American Steel Fabrication, Inc.
Aschinger Electric
Bazan Painting Company
Bi-State Utilities
Budrovich Contracting
Cee Kay Supply
Common Sense Solutions
Dawson-Dodd Heating & Cooling
Duct Systems, Inc.
Enterprise Bank & Trust
Erb Equipment
Fabick Rents
Fenix Construction
Foreman Fabricators
Freeman Contracting
Gallop, Johnson & Neuman
George McDonnell & Sons

Grant Contracting
Green Turf Irrigation
Greensfelder, Hemker & Gale
Hanneke Hardware
Irwin Products
J.D. Kutter Insurance
Johnson Controls
K & D Counter Tops
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GC Expo

The 9th Annual Meet the GCs Expo, held January 26th at the St. Charles Convention Center, was a success! New this year was the exclusive ASA members only time with the generals from 3:30—5:00 p.m. and many took advantage of it. Twenty-eight general contractors participated and had booths.

Congratulations to Mike Smith of Schaeffer Electric for winning the condo at Lake of the Ozarks at Red Oak Resort & RV Park, *donated by Reinhold Electric* and to Jeff French of Frost for winning the 50/50. Gundaker Commercial held a drawing for 2 iPods and the winners were Ron Starwalt, Overhead Door and Fran Sharos, Windoor Company.

Make plans to attend next year's Expo on January 25, 2012.



Day at the Capitol

Please make plans to join us at “Day at the Capitol” on Wednesday, March 9, 2011. We will walk the halls and hand out letters to the legislators to educate them on ASA and subcontractor issues. There are many new legislators this year so we need to make our issues known and help educate them.



*Picture from Legislative Day
at the Capitol 2009*

The following week Dick Stockenberg will be speaking at our monthly meeting on March 16 and will share our legislative agenda and speak proudly of our past victories.

We encourage you to become involved in the legislative process. We believe this is a great learning opportunity to see how the legislature works and strengthen our relationships in Jefferson City.

We will be coordinating rides to the Capitol so please let Reba know if you are interested in attending.

St. Patrick's Day “Bloody's, Beer and Breakfast” Fundraiser benefiting the Tom Owens Memorial Scholarship Fund

Thursday, March 17, 2011
South Pavilion in Shaw Park
7:30 a.m.—9:30 a.m.

Suggested contribution is \$20 per person.
RSVP to Reba before March 10, 2011

Stop by and eat breakfast before heading to work or the parade.

All money donated to the scholarship fund will help young people further their education.



The 2011 legislative session has been moving rather quickly. In the month of February the House and Senate began moving bills through Committees and holding floor debate daily on several of the priority bills outlined at the beginning of session.

The legislative process requires bills to be heard and voted out of committees before getting to the floor for debate and to be voted on by the entire legislative body in each chamber. Committee hearings have been moving along most of session; therefore, several bills have been able to make to the floor for debate and passage. The actual numbers of bills that have been debated and passed are not many; however, the bills that have been debated and passed out of each Chamber have been bills which are considered Republican priority bills.

There are many pieces of legislation that have been filed this year that affect the construction industry. House Bill 319 sponsored by Rep Barney Fisher was heard in February. HB319 would change the laws regarding contracts for public construction projects that are funded - in any amount - with public funds. According to the sponsor of the bill, HB319 is similar to legislation that was passed several years ago, known as the "Fairness in Public Construction Act," which would change the construction bidding process as it relates to non-union vs. union employers.

Another highly controversial piece of legislation affecting the construction industry that received a lot of committee time in February was Right-to-Work legislation. Three different, yet relatively similar right-to-work bills were heard in the Senate General Laws Committee over the course of two weeks. The bills have been passed out of Committee and now await floor debate. It is unknown when or if the bills voted out of Committee will ever receive debate time on the floor of the Senate as the bills have the chamber split. If enacted the right-to-work bills would bar employers from requiring employees to engage in or cease engaging in certain labor practices. These proposals would establish Missouri as a right-to-work state. The difference between the two bills is that SB197 includes a referendum clause.

As I pointed out in my weekly legislative updates, one of ASA's legislative priorities this year is to make changes to the statute relating to the additional insured provisions in construction contracts. This is a very controversial piece of legislation. This legislation was filed in February, and as of press time, the bill had not yet received a hearing. Without a hearing is difficult to know exactly who will oppose or support this piece of legislation; however, in the past we saw opposition from several owners groups and utility groups. Our sponsors have already engaged in conversations with some of the groups we expect will oppose this legislation. We will continue to work to push this piece of legislation forward and anticipate the bill will receive a hearing soon. I will keep you updated through my weekly legislative reports of the progress we are making on this bill and the many other bills that affect our members.

ASA's annual legislative day at the Capitol will be *Wednesday, March 9*. This is a great opportunity for you to become politically involved and make our voice heard. We will coordinate legislative visits, transportation and information sheets. If you are interested, please contact Reba Gillick, ASAP, via e-mail at reba@asamidwest.com or call her at the ASA office (314) 214-1664.

If you are not receiving my weekly legislation updates via e-mail, please contact Reba or myself so we can add you to the list. Additionally, I am available at any time to answer any questions you may have regarding ASA's legislation, other legislation, or anything else going on in our State Government. Nikki Strong

POSITION AVAILABLE

Director of Civil Construction Department

Oversee Business Development, Estimating and Department Management.

**Email resume and salary history to:
admin.interview@gmail.com**

What Has ASA Done for Montgomery Bank?

Montgomery Bank has several lenders who have experience working with customers in the construction trades. We were encouraged to join ASA several years ago by some of our existing customers, and we believe that membership in the ASA has been very helpful in serving those customers. By networking with people at the various meetings and events, through the monthly newsletter and other publications, we learn about current events and trends in the industry, and we learn more about the ever-changing needs of construction companies in today's economic environment. This is especially important because Montgomery Bank is actively seeking new relationships with fiscally responsible customers, especially in the construction industry.

We truly value our relationships in this industry; this is a fun group of people and we are honored to share membership in this organization. Montgomery Bank has five branches in the St. Louis area; most of our commercial lenders in St. Louis have significant experience in this industry, and we have quite a few customers in the industry including several ASA members.

Bob Cockrell, CPA, Sr. Vice President
Don Doherty, Community Bank President

Placemats

We are replacing the bar sponsors with Placemat/Dinner Sponsors. The 11X17" color placemats will be at each place setting and feature 4 sponsors per month. In addition, a listing of upcoming events will be in the center of the placemat.

Cost is \$250 per sponsor. If you are interested in being a sponsor, please let Reba know. A sample is below.

The sample placemat is a rectangular layout with a white background. At the top left is a logo for 'Hanneke' with the tagline 'REFUND • SELECTION • SATISFACTION' and 'HARDWARE & INDUSTRIAL SUPPLY CO. - SINCE 1927'. Below it is the text 'Great Product Lines for all Your Contractor Supplies!'. At the top right is a logo for 'AMERICAN SUBCONTRACTORS ASSOCIATION MIDWEST COUNCIL'. Below it is a section titled 'Upcoming Events:' with a list of dates and events: March 14 ASA National Convention, March 15 Day at the Castle, March 16 Monthly Meeting at Subway's, March 17 St. Patrick's Day Fundraiser at O'Reilly's Pub, April 9 10th Annual Awards Gala Four Seasons Hotel, April 20 Monthly Meeting at Subway's. At the bottom left is a logo for 'BAZAN PAINTING CO.' with the tagline 'Bringing your experience, professionalism and quality since 1977' and 'WWW.BAZANPAINTING.COM CALL WALTER OR VAL (314) 991-3500'. At the bottom right is a logo for 'Erb' with the phone number '636-349-0200' and the website 'www.erbequipment.com'. At the very bottom, there is contact information for the ASA Midwest Council: 'P.O. Box 270 • Union, MO 63084 • 314-218-9564 info@asmidwest.com • www.asamidwest.com' and a Facebook icon with the text 'Visit us on Facebook at ASA-Midwest Council'. A small note says 'Place Your Sponsor Here \$250/Month'.

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Each month you will receive an update on each committee within ASA to keep you informed of what the committees are doing for you. Below are this month's updates.

MEMBERSHIP

We are heading into the spring and summer months with some huge events planned. This is the perfect time to become a member or recruit one as we have the Awards Gala, BBQ and Golf Tournament on tap. These are great networking events that can produce business opportunities. Not to mention they're fun as all get out! Use this season to jump on the excitement of spring breaking and get involved. After that, get someone else involved. The more the moneyier, I mean "merrier!" Tom Woodcock

PROGRAMS

Programs have been scheduled out for the entire year. (All topics are subject to change)

- February New Crane/Derrick Standard
- March Legislative
- April Bill DeWitt, III with Cardinals
- May GC Gala Winners
- June Annual Vendor BBQ
- July Networking with 2011-12 Goals
- August DEA
- September SCORE, Gary O'Grady
- October Social Media, Joe Blanner
- November General Contractor
- December Casino Night

If you have any suggestions for programs or seminars, please let me know. Rick Williams

TECHNOLOGY

ASA just purchased a new LCD projector and laptop to use for presentations at the meetings. Be watchful of the information scrolling during the networking time at meetings. There are member benefits and upcoming events. Vince Irwin

BBQ

In lieu of the June 15th business meeting, we will hold our Annual BBQ at Queeny Park. The committee is meeting in two weeks to start planning the details. If you have an interest in being on the committee, please let Reba know.

If you would like to have a booth at the BBQ, please let Reba, Kevin Douglas or Rick Williams know. More information will be sent out soon.

CONTRACT REVIEW

The Contract Review Committee meets the fourth Wednesday of each month to review subcontracts used by general contractors as they are submitted by ASA members. We mark up the subcontracts and suggest changes. We rate the importance of each suggested change, whether an addition, deletion or modification. We maintain a library of subcontracts that have been reviewed and make them available upon request to ASA members. Email Reba if you are interested in reviewing the list of contracts available or obtaining a contract. Dick Stockenberg

AWARDS GALA

The gala committee is underway planning the 18th Annual Awards Gala on Saturday, April 9, 2011 at the Four Seasons Hotel. Our theme this year is "An Evening Under the Stars." Be sure to mark your calendars as we have a full night of entertainment planned with MC Craig Hawksley, Lindbergh Strolling Strings and pianist.

We hope you join us after the event for cocktails. The ballroom at the Four Seasons consumes the entire floor. There is also a great balcony for viewing downtown.

Sponsorships are still available. We will have two large screens on both sides of the stage that will scroll the PowerPoint presentation before dinner, during dinner and after the program. There are many general contractors who attend so it's a great way to showcase your company. Molly Spowal

ASA Releases Updated Bidding and Negotiating Tools for Members

Construction subcontractors are routinely asked to sign contracts with complicated and risky payment, retainage, claims, insurance and other terms. So where can subcontractors find tools to help them get equitable terms like those in the ASA-endorsed ConsensusDOCS 750 subcontract? ASA offers members three solutions:

ASA's Addendum to Subcontract (2011)

ASA's Short-Form Addendum to Subcontract (2011)

ASA's Subcontractor Bid Proposal (2011)

“ASA’s bidding and negotiating tools should be a part of every subcontractor’s plan for business success,” said 2010-11 ASA President Timmy McLaughlin, Austin Construction Company, Inc., Summerville, S.C. “In today’s tough business environment, the 2011 ASA bid proposal and addenda give subcontractors flexible options for getting a reasonable subcontract agreement and getting to work.” ASA members can use the language in the addenda to suggest terms or modify proposed subcontract agreements.

In more limited negotiations, members can use the updated *ASA Short-Form Addendum to Subcontract (2011)* to address four key areas of subcontracts: hold harmless; insurance; payment terms; and changes and claims.

The *ASA Subcontractor Bid Proposal (2011)* takes advantage of the new and improved 2011 ConsensusDOCS, enabling subcontractors to condition their bids on use of the *ConsensusDOCS 750 Agreement Between Contractor and Subcontractor*. Bids conditioned with this form create a binding subcontract based on the terms of the ConsensusDOCS 750. Instructions for bid conditioning are included.

ASA members may access the 2011 addenda and bid proposal on the [Contracts & Project Management](#) page of the ASA Web site at www.asaonline.com.

Don't let the 'Fine Print' of Routine Project Documents Eliminate Your Critical Rights

One major challenge for subcontractors operating in today’s business environment is the potentially damaging language hidden in the “fine print” of routine project documents. Change orders, pay applications and other routine documents all too often contain language limiting subcontractors’ rights to prompt and full payment, and other critical rights. That’s why, on Jan. 1, 2011, ASA released model “stickers” that ASA members can affix to:

- Signed change orders that you submit to a customer. The *ASA Change Order Reservation of Rights* sticker reserves your rights to “additional claims for any delays, inefficiencies, disruption or suspension, extended overhead, acceleration, and the cumulative impact of this and other change orders issued to this date.”
- Signed lien or bond waivers that you submit to a customer. The *ASA Lien Waiver Reservation of Rights* sticker specifies that you do not waive “any lien or bond rights securing payment of retainage, unbilled changes, and claims which have not been asserted in writing or which have not yet become known to Subcontractor.”
- Signed payment applications that you submit to a customer. The *ASA Payment Application Reservation of Rights* sticker makes releases or waivers “effective only to the extent of payments actually received and ... inapplicable to work performed and/or materials furnished for which payment has not been received.”
- Signed schedule approvals that you submit to a customer. The *ASA Schedule Approval Reservation of Rights* sticker reserves your right to claims for “additional costs with respect to unresolved issues” and claims resulting from work that does not proceed in accordance with the schedule because of the actions of others.

ASA’s Task Force on Contract Documents developed the stickers. Print them out on Avery 5163 (or equivalent) stickers and keep them handy in your office. *Download the stickers from the ASA Web site by clicking on “Log In/Access Member Resources” and then on “Contracts and Project Management documents.”*

Jobsite Inspections – Are You Doing the Right Thing?

By: Patrick Wineburner, Budrovich Contracting

Complacency- *-noun, plural* -cies.

a feeling of quiet pleasure or security, often while unaware of some potential danger, defect, or the like.

In field operation jobs that are repetitive in nature, where the task becomes a habit or “second nature,” it is not uncommon to have an accident/incident/injury because the employee unintentionally takes his/her head out of the game. When a jobsite inspection becomes “second nature,” it can also lead to errors which could have a very serious impact on our employees.

It is common for companies to have a form or checklist that is to be used during jobsite inspections. These forms can provide some great information and guidance as to what items need to be inspected, but it is very important that they don't become the end-all-be-all for the jobsite inspection. Jobsites are seldom the same, so why should the inspection?

When doing a jobsite inspection don't let external issues keep your head out of the game. Take a moment and just look at the jobsite or task...don't analyze...just look at the job as it is the first time that you have seen that operation. You may be surprised by what you actually see.

Another technique is to observe the operation and look at what other items are in the area. Are there steam lines, cable tray, overhead power lines, floor openings, etc.? Once you have identified

these other items, ask yourself how/what would happen if your employees came into contact with them. Once you identify these items (that they may have or have not identified) make sure that they are informed of their location and what they need to do to stay safe when working over and around the identified hazards.

Lastly, remember that all of our goals should be the same. Every employee should have every right to retire from their trade in good condition so they can enjoy their retirement years. THAT is the true measure of a successful safety program.

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ASSOCIATION PARTNERSHIPS:

Mason Contractors Assoc.(MCA)

Contact Pam Holway

or David Gillick

(314) 645-1966



Next Meeting: March 1, 2011

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American Society of Professional
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Contact Mindy Funk or

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Next Meeting: March 24, 2011

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