

BAY AREA UNION  
ROOFING CONTRACTORS  
WORKERS' COMPENSATION TRUST

TRUST AGREEMENT  
and  
ADR PROCEDURES

**Shogren**  
**Ombudsperson**  
**Services**

**Barbara Shogren Lies, M.A., C.R.C., N.C.C.**  
Ombudsperson

7177 Brockton Ave., Suite 101 • Riverside, CA 92506  
(951) 788-9910 • FAX: (951) 788-0320

Toll Free (800) 905-7595  
Email: shogren@earthlink.net

**BAY AREA UNION ROOFING CONTRACTORS WORKERS'  
COMPENSATION TRUST FUND AGREEMENT**

**WITNESSETH:**

WHEREAS, the parties hereto establish a Workers' Compensation Trust pursuant to the California Labor Code Section 3201.5, and

WHEREAS, it is desired to establish this Workers' Compensation Trust Fund effective August 1, 2003 pursuant to Section 302(c) of the Taft-Hartley Act, as amended 29 U.S.C. 186(c), and with the purpose that the Trust will be a qualified Trust under Internal Revenue Code Section 501(c); and

WHEREAS, it is recognized that this Trust is not to be an "employee benefit plan" within the meaning of ERISA, 29 U.S.C. 1001, et seq., as specifically exempt therefrom pursuant to 29 U.S.C. 1003(b)(3) and therefore is not governed by ERISA.

NOW, THEREFORE, in consideration of the mutual undertakings of the parties hereto, this Agreement and Declaration of Trust is hereby entered into by and between Locals 40, 81 and 95 of the UNITED UNION OF ROOFERS, WATERPROOFERS AND ALLIED WORKERS, AFL-CIO (hereinafter referred to as "Union") and ASSOCIATED ROOFING CONTRACTORS OF THE BAY AREA COUNTIES, INC. (hereinafter referred to as the "Signatory Association"), and any other Roofers Union Local and signatory employer(s) that may become a party hereto by entering into a collective bargaining agreement as defined herein and being accepted by the Board of Trustees.

**ARTICLE I: TITLE**

- 1 This Trust Agreement and the Trust shall be known as the "Bay Area Union Roofing Contractors Workers' Compensation Trust."

**ARTICLE II: USE OF TERMS**

1. Definitions

- a. **ADR AGREEMENT.** The term "ADR Agreement" shall mean the collectively bargained agreement between the Union and the Association under the terms of which union roofing contractors may elect to participate in an alternative system of medical care delivery, medical evaluation, vocational rehabilitation and dispute prevention and resolution established pursuant to Labor Code Section 3201.5.

**BAY AREA UNION ROOFING CONTRACTORS  
WORKERS' COMPENSATION INSURANCE TRUST AGREEMENT**

- b. ASSOCIATION. The terms "Association" or "Signatory Association" shall mean Associated Roofing Contractors of the Bay Area Counties, Inc.
  - c. COLLECTIVE BARGAINING AGREEMENT. The term "Collective Bargaining Agreement" shall mean any written Working Agreement, other than a project labor agreement, entered into by the Union with the Association or with any Employer and any amendment, modification, supplement or renewal thereof.
  - d. COMMITTEE. The terms "Committee", "Labor-Management Safety and Health Committee", and "Safety and Health Committee" means any Labor-Management Safety and Health Committee established pursuant to the ADR Agreement. Said committee(s) shall be advisory to the Trustees.
  - e. EMPLOYEE. The term "Employee" shall mean any employee whose Employer elects in writing to participate in and be covered by the ADR Agreement.
  - f. EMPLOYER. The term "Employer" shall mean any individual, partnership, corporation or joint venture which now or hereafter is or may become a party to a collective bargaining agreement with the Union and who signs the ADR Agreement.
  - g. FUNDING AGREEMENT. The term "Funding Agreement" shall include all written agreements or contracts between the Trustees and any third parties pursuant to which funds are paid to this Trust.
  - h. JOINT BOARD OF TRUSTEES. The terms "Joint Board of Trustees", "Joint Board", "Trustees" or "Board" shall mean the Joint Board of Trustees created by this Trust Agreement. Insofar as the Joint Board of Trustees may, in its discretion, delegate the authority to perform specified functions in connection with the administration of the Trust and the insurance program, the terms "Joint Board of Trustees", "Joint Board", "Trustees" or "Board" shall also mean its designee(s) for such purposes.
  - i. PARTY or GROUP. The terms "Party", "Appointing Party", and "Group" refer to either the Association or the Union, as defined herein, as the case may be.
- TRUST AGREEMENT. The terms "Trust Agreement", "Agreement", or "Declaration of Trust" shall mean this Agreement and any changes, amendments and modifications thereto.
- k. TRUST FUND. The terms "Trust Fund" and "Fund" shall mean the entire Trust estate which is created, held and established pursuant to the terms of

**BAY AREA UNION ROOFING CONTRACTORS  
WORKERS' COMPENSATION INSURANCE TRUST AGREEMENT**

this Trust Agreement, and shall include all investments, money, gifts, grants and other assets, and all interest and earnings thereto, held by the Trust in accordance with the terms of this Trust Agreement.

1. **UNION.** The term "Union" shall mean Locals 40, 81 and 95 of the United Union of Roofers, Waterproofers and Allied Workers, AFL-CIO, and any other affiliate Locals of the Roofers Union that may become a party hereto.

2. Waiver of Notice

Any notice required under this Agreement, or by any regulation or rule established by the Trustees, may be waived by the person entitled thereto.

3. Standards of Interpretation

The provisions of this Trust are designed and intended so as not to be governed by ERISA, and therefore the Trustees shall comply with the applicable law of California, and this Trust Agreement shall be interpreted and enforced according to applicable California law.

The Board of Trustees is granted full discretionary authority to construe the terms of this Trust Agreement and any other plan or documents established thereunder. Any action taken by the Board of Trustees within its authority granted by this Trust Agreement shall be binding on all persons affected to the fullest extent permitted by law. No action of the Board of Trustees shall be revised, changed or modified by any arbitrator or court unless the party seeking such action has exhausted all of its administrative remedies, and is able to show by clear and convincing evidence that the Board's decision was an abuse of discretion in light of the information actually available to it, and considered by it, at the time of its decision. The purpose of this provision is to make Board of Trustees actions binding on all persons to the fullest extent permitted by law. Therefore, if any of the foregoing provisions should be held to go beyond what is legally permissible, the remaining provisions shall nevertheless be given effect insofar as the law permits. If any document is translated to another language, the Board's interpretation will be based solely on the English version.

The title to articles and headings to paragraphs in this Trust Agreement are placed herein for convenience of reference only and in the case of any conflict or dispute, the text of this Agreement rather than such title and headings shall control.

**BAY AREA UNION ROOFING CONTRACTORS  
WORKERS' COMPENSATION INSURANCE TRUST AGREEMENT**

**ARTICLE III: PURPOSES OF THE TRUST**

**1. Purposes**

The parties hereto agree to create effective August 1, 2003, a Workers' Compensation Trust pursuant to the California Labor Code, Section 3201.5, which shall have, for employees who claim compensation for personal injuries and occupational diseases pursuant to the Workers' Compensation Laws of the State of California (hereinafter referred to as "injuries") any one or more of the following purposes as established by the Trustees:

- a. Improve access to high quality medical care for injuries;
- b. Reduce the number and severity of disputes between employees and employers, including their respective insurers, related to injuries;
- c. Provide an efficient and effective method of dealing with disputes resulting from injuries;
- d. Enhance the involvement of workers in making decisions that affect their working lives;
- e. To foster improvements in occupational safety and health and other working conditions in the industry; and
- f. To engage in any other lawful activity incidental or related to the accomplishment of these purposes.

**2. Use of Funds**

The monies deposited in this Trust may be used for any of the above-stated purposes. If the California Labor Code, Section 3201.5 or other applicable law is amended to allow for additional purposes, the Trustees may by resolution incorporate any such lawful purpose in this Trust agreement. No part of the net earnings of the Trust shall inure (other than through payments for the purposes listed above) to the benefit of any private shareholder or individual.

**3. Trust Fund**

The Trust Fund shall consist of all funds received and investments and reinvestment thereof, and all interest and income earned thereon, and all other receipts of every kind received by the Trust in accordance with this Agreement, or any applicable funding agreement. No part of the Trust shall be used for or diverted to purposes other than those allowed by this Agreement, as established by the Joint Board of Trustees. The Trust is established pursuant to Section 302(c) of the Taft-Hartley Act, as amended 29 U.S.C. 186(c).

**BAY AREA UNION ROOFING CONTRACTORS  
WORKERS' COMPENSATION INSURANCE TRUST AGREEMENT**

4. Non-Assignment

No part of this Fund shall be paid to any Employer, Union, or Employee except as an activity of the Trust approved by the Trustees as provided in the ADR Agreement attached hereto or other written Plans or Programs as may be adopted by the Trustees. The Trustees shall not recognize any transfer, sale, mortgage, pledge, hypothecation, order or assignment by any person of all or any interest hereunder, and such interest shall not be subject to and shall be exempt from the claims of creditors or any other claimant and from all orders, decrees, levies, garnishments, liens, attachments and/or executions and other legal or equitable process or proceedings.

**ARTICLE IV: TRUSTEES**

1. Composition of Joint Board of Trustees

The Trust Fund shall be administered by a Joint Board of Trustees consisting of three (3) Labor Trustees and three (3) Management Trustees. The Labor Trustees shall be appointed one (1) each by Locals 40, 81 and 95 of the Union. The Management Trustees shall be appointed by the Association. Each appointment shall be certified in writing by the appointing entity and said writing shall be kept in the office of the Joint Board of Trustees. Each party may appoint one (1) alternate Trustee for each Trustee that it appoints.

2. Term of Office/Removal of Trustees

Each Trustee shall serve during the existence of this Trust until his death, incapacity, resignation, or removal. The signatory parties hereto are each individually authorized to establish procedures for appointment, reappointment, and removal of the Trustees. Trustees may be removed for any reason at any time upon written notice by the Appointing Entity or its designated representative.

3. Resignation of Trustees

Any Trustee may resign at any time by giving thirty (30) days prior written notice to the remaining Trustees and to the parties signatory to this Agreement, and such notice shall state a date when such resignation shall take effect. Such resignation shall take effect on the date specified in the notice, unless a Successor Trustee shall have been selected at an earlier date, in which event, such resignation shall take effect immediately upon the selection of said Successor Trustee.

**BAY AREA UNION ROOFING CONTRACTORS  
WORKERS' COMPENSATION INSURANCE TRUST AGREEMENT**

4. Powers Pending Appointment of a Successor Trustee

In case of any vacancy in the office of a Trustee, the remaining Trustees may exercise each and all of the powers, authority, duties and discretion conferred upon them by this Agreement.

5. Failure to Timely Appoint Trustee

If a vacancy is not filled within 90 days, any Trustee or Employee participating in the workers' compensation Program may petition the appropriate federal court to fill the vacancy. Any person appointed by a court shall serve at the pleasure of the party entitled to appoint him, the same as though appointed by that party.

6. Manner of Voting/Quorum

A Quorum shall consist of a majority of trustees representing each Labor and Management. Unit voting shall prevail in effecting action by the Trustees. A majority of each, the Management appointed Trustees as a group, and the Union Trustees as a group, shall be required to effect any act pursuant to this Agreement. In the event any Trustee is unable to attend a meeting, an alternative Trustee may attend in his place and shall be privileged to vote on behalf of the Trustee. The designation of an alternate to attend shall be made by the party effecting the appointment under the rules and procedures established by each appointing party. A majority of those in attendance at the Trustees' meeting shall be required to effect any act pursuant to this Trust Agreement. Trustees shall be deemed to be in attendance if, although not in the same room, they can all hear and speak to one another, such as in a conference call or video conference.

7. Manner of Action – No Meeting Required

The Trustees may take any action without a meeting, provided that all of the Trustees sign a written consent to such action. The Trustees may adopt rules and regulations regarding the procedure for voting on matters without a meeting.

8. Delegation of Authority

The Trustees may authorize any one or more of their number, or persons other than the Trustees, to sign notices, applications, certificates, consents, approvals, waivers, checks, or other documents in connection with the administration of the Trust and investment of the Trust Funds.

9. Appointment of Chairperson and Secretary

The Trustees shall select a Chairperson of the Board who shall serve a two-year term. The Trustees shall also designate any of them as Secretary of the Board to serve a two-year term. If the Chairperson is a Labor Trustee then the Secretary

**BAY AREA UNION ROOFING CONTRACTORS  
WORKERS' COMPENSATION INSURANCE TRUST AGREEMENT**

shall be a Management Trustee and vice versa. The Trustees may select such other officers with such other powers, as they deem advisable.

**10. Meetings of the Joint Board of Trustees**

The Trustees shall determine the time and place of their meetings and may establish a regular meeting schedule, as they deem advisable. Meetings of the Trustees may be held at any time by request of the Chairperson, or the Secretary, or two (2) Trustees, one from Labor and one from Management, by giving prior notice thereof to all of the Trustees. Meetings of the Trustees may be held at any time without notice if all of the Trustees consent thereto by signing a written waiver.

**11. Rules of Procedure**

The Joint Board of Trustees is empowered to adopt rules of procedure for the conduct of its meetings.

**12. Compensation and Expenses**

Reasonable compensation may be paid for services provided the Trust fund by professionals, including but not limited to any Administrator, Attorney, safety professional, Ombudsman, Mediators or Arbitrators, or organization providing mediators or arbitrators, upon written approval of the Trustees. The Trust shall be audited annually by an independent auditing/accountancy firm selected by the Joint Board of Trustees.

**13. Audit**

The Trust shall be audited annually by an independent auditing/accountancy firm selected by the Board of Trustees.

**14. Expenses of Trustees**

No Trustee shall be compensated by the Trust for service as a Trustee, but Trustees shall be entitled to reimbursement of expenses properly and actually incurred in performance of their duties as Trustees to the extent authorized by the Board of Trustees.

**15. Bonds and Insurance**

No bond or other security shall be required of any fiduciary or other person except as required by law. The Board, in its discretion, may obtain such bonds or insurance for itself and its agents as it deems appropriate.

**BAY AREA UNION ROOFING CONTRACTORS  
WORKERS' COMPENSATION INSURANCE TRUST AGREEMENT**

**16. Allocation of Designation of Responsibilities**

The Board of Trustees may allocate to members of the Board or delegate to others any of the powers that it has under this Trust Agreement.

**ARTICLE V: GENERAL POWERS AND DUTIES OF TRUSTEES**

The powers granted to the Trustees are in addition to and not in limitation of all powers granted to the Trustees by common law, statute, and other provisions of the Trust Agreement; are exercisable from time to time, and are not powers to be considered exhausted by their exercise on one or more occasions; and are exercisable in the sole discretion of the Trustees. Unless specifically limited by law or this Agreement, the Trustees shall have the power to administer the Trust and do all such acts they consider to be in the best interest of the Trust and to exercise any of the following powers:

**1. Powers and Duties**

- A. To invest, reinvest and encumber funds of the Trust in any investments permitted by law for the investment of Trust Funds, pursuant to the common law and California Trust Law. The Trustees shall have full power and authority in respect to any and all property at any time received or held in the Trust, to do all such acts, take all such proceedings and exercise all such rights and privileges, whether herein specifically referred to or not, as could be done, taken or exercised by the absolute owner thereof, including without limitation, the following powers and authority:
- (i) To retain the same for such period of time as they deem appropriate;
  - (ii) To sell the same, at either public or private sale, at such time or times and on such terms and conditions as they deem appropriate; and
  - (iii) To purchase, hold, sell, invest and reinvest Trust assets, together with the income therefrom, in common stock, preferred stock, convertible preferred stock, bonds, debentures, convertible debentures, mortgages, notes, mutual fund shares, savings accounts, time certificates of deposit, commercial paper and other evidence of indebtedness, other securities, policies of life insurance, and property (personal, real or mixed, and tangible or intangible), the value of which is readily ascertainable and readily marketable.
- B. To delegate to an investment consultant, the responsibility for investment and reinvestment of the Trust Funds;

**BAY AREA UNION ROOFING CONTRACTORS  
WORKERS' COMPENSATION INSURANCE TRUST AGREEMENT**

- C. To accept, compromise, arbitrate or otherwise settle any obligation, liability or claim involving this Trust, including any claim that may be asserted for taxes under present or future law. The Trustees may also enforce or contest any such obligation, liability or claim by appropriate legal proceedings, but they shall not be obligated to do so unless in their judgment it is in the best interests of the Trust to do so;
- D. To receive funds pursuant to any funding contract approved and entered into by the Trustees as permitted by the Trustees pursuant to the express terms of this Trust. Said funds shall be deposited in a financial institution, including without limitation, a savings and loan or state or national bank association. Withdrawals from the Fund may be made only upon the signature of two Trustees, one Labor Trustee and one Management Trustee, or individuals or organizations appointed or delegated by such Trustees;
- E. To provide for the administration of the Trust, the Trustee may delegate administrative functions to an administrator who may be an independent contractor with his own office and staff, or alternatively, the Trustees may engage the services of an administrator and delegate any of the following functions:
- (i) Establish and maintain an office;
  - (ii) Establish written procedures concerning collection of assets or income and payment of debts or expenses in connection with the Trust administration; and
  - (iii) Enforce the rules and regulations adopted by the Trustees for the administration of the Trust.
- F. To enter into loan, subordination and/or guarantee agreements, which in the judgment of the Trustees are desirable to protect or enhance any investment in which the Trust holds an interest;
- G. To purchase on behalf of the Trust, errors and omissions and other appropriate insurance policies to protect the funds of the Trust, the Trustees, and others standing in the capacity of fiduciary to the Trust;
- H. To direct the administrator selected by the Joint Board of Trustees at the Boards' discretion, concerning the expenditure of funds for any project, program or activity undertaken pursuant to this Agreement;

To keep on file at the principal administrative office, or in such other places as may be designated, all pertinent information relating to the establishment and administration of this Trust, including without limitation, a copy of the Trust Agreement, and all annual and interim reports made in connection therewith;

**BAY AREA UNION ROOFING CONTRACTORS  
WORKERS' COMPENSATION INSURANCE TRUST AGREEMENT**

and shall file with the appropriate governmental agency all forms, reports and other information required. The records referred to herein shall be maintained for a reasonable period of time and as required by law;

- J. To pay Trust expenses;
- K. To establish such rules and regulations as may be necessary in the administration of the Trust;
- L. To borrow money to carry out the purposes of this Trust and to pledge, assign or hypothecate any of the Trust assets to secure such loan;
- M. To sue or to be sued on behalf of and in the name of the Trust, which shall be the only necessary party plaintiff or defendant in any legal action, and service of process upon it may be made upon any Trustee, and to compromise, arbitrate or otherwise settle any obligation, liability or claim involving the Trust;
- N. To require any persons or entity with obligations or rights hereunder to furnish, or permit an audit of, any reasonable information, data, and documents which are pertinent in verifying the accuracy of moneys due the Trust or which are otherwise pertinent in administering this Trust;
- O. To publish, file and distribute all reports required by law or this Agreement;
- P. To retain or employ attorneys, accountants, actuaries, office personnel, professional administrators and consultants and other suitable agents and employees; and unless otherwise provided by applicable law, it shall be immaterial that the persons so retained or employed have been retained or employed by anyone else with rights or obligations hereunder. Any agreement with such persons shall oblige them to comply with the provisions of the Trust Agreement and the Rules established pursuant thereto and may be for any period of time the Trustees deem appropriate, but the Trustees may terminate any such agreement at any time, even if by so doing this Trust might be liable for breach of contract;
- Q. To enforce all obligations under funding contracts by any means the Trustees deem appropriate, including hiring attorneys to pursue such claims or assigning them to a collection agency;
- R. To adopt uniform, specific, reasonable and diligent collection procedures to deal with any breach of funding contract;
- S. To appoint such agents as the Trustees may deem necessary to carry out their duties under the provisions of this Trust Agreement;

**BAY AREA UNION ROOFING CONTRACTORS  
WORKERS' COMPENSATION INSURANCE TRUST AGREEMENT**

- T. To apply for grants or other forms of aid or benefits with any government agency, private foundation or any other grantor, including without limitation, the Federal Mediation and Conciliation Service or its successor; and
- U. To establish such rules and regulations for the admittance of new Employers as the Board of Trustees in its sole discretion deems Appropriate.

2. Limitation of Liability

The Trustees shall discharge their duties hereunder in accordance with the provisions and standards set forth herein. The Trustees shall not, however, be liable for any act or omission to act, so long as it is not committed intentionally, and the Trust shall exonerate, defend, reimburse and hold harmless each Trustee against any such act or omission to act. As examples and not by way of limitation, Trustees shall be protected:

- A. In acting upon any papers, documents, data or information reasonably believed by them to be true and accurate and to be made, executed, delivered or assembled by the proper parties;
- B. For any act concerning which they reasonably rely upon the opinion of legal counsel;
- C. For any act of any agent, employee, consultant, actuary or attorney chosen and retained with reasonable care: or
- D. For an act of or omission of other Trustees in which they do not join.

**ARTICLE VI: DEADLOCK OF TRUSTEES/ARBITRATION**

1. Arbitration

Except as expressly limited by this Agreement, in the event of a deadlock over any matter before the Trustees, the matter shall be submitted to a decision by an arbitrator selected by the Trustees or, if no agreement on an arbitrator is reached within fifteen (15) calendar days from the time the dispute arises, then from a panel of five arbitrators submitted to the Trustees by the American Arbitration Association. Each side shall strike two arbitrators. The remaining arbitrator shall be empowered to resolve the deadlock. The issue shall be submitted and decided as quickly as practicable, and the decision of the arbitrator shall be binding upon all parties. The arbitrator shall not have the power to vary the terms of the Trust Agreement or of any Collective Bargaining Agreement. Unresolved differences arising as to the interpretation or application of the provisions of this Agreement

**BAY AREA UNION ROOFING CONTRACTORS  
WORKERS' COMPENSATION INSURANCE TRUST AGREEMENT**

shall not be subject to the grievance or arbitration procedures adopted in any Collective Bargaining Agreement. All such unresolved differences shall be resolved by the arbitrator. Nothing herein contained shall limit any right that the Union may have to enforce the terms of a Collective Bargaining Agreement. Any costs and attorney fees incurred in connection with the foregoing shall be paid out of the Trust fund including any reasonable compensation to such arbitrator.

**ARTICLE VII: FUNDING**

1. Funding

Each Employer or any other entity that is party to a funding contract shall pay to the Trust Fund such amounts as are required to be paid under the provisions of any applicable funding contract/agreement between it and the Trustees. Each payment or installment shall be accompanied by a complete report in such form as the Trustees may from time to time direct.

2. Timeliness

The payments provided herein are due and payable on or before the date specified in the applicable funding agreement.

3. Delinquent Contributions

Delinquent contributions shall accrue interest from their due date until paid. The interest rate may be established from time to time by the Board of Trustees, or in the absence of such establishment the interest rate shall be the underpayment rate of Internal Revenue Code Section 6621 in effect from time to time.

4. Employers Records and Audits

Each Employer shall maintain sufficient records for the Trust to determine whether it has satisfied all obligation to the Trust, and the Board of Trustees, or its agent, may audit such records even if the information would otherwise be privileged.

5. Cooperation

Employers shall cooperate with the Board of Trustees in carrying out the purposes of the Trust, and whenever requested by the Board of Trustees, the Employer will distribute to Employees currently in its employment such information as the Board of Trustees deems necessary to carry out its obligations.

**ARTICLE VIII: MISCELLANEOUS**

1. **Exchange of Information**

The Union, Employers, the Association, and any of their representatives, shall furnish at the request of the Trustees, all information within their control with respect to any health and safety committee program or activity established pursuant to this Agreement or the ADR Agreement. The Trustees shall furnish, at the request of the Union and the Association, all information within the control of said Trustees, which the Union and the Association consider necessary to perform their responsibilities and with respect to any program or activity established hereunder.

2. **Number and Gender of Words**

Whenever appropriate, words used herein in the singular may include the plural, the plural may be read as the singular, and the masculine may include the feminine.

3. **Withdrawal of Funds**

All checks, drafts, vouchers or other withdrawals of money from the Trust shall be signed by at least two Trustees [one from Labor and one from Management] designated by the Joint Board of Trustees, or representatives of each such Trustee, as allowed by this Agreement or any rules and regulations adopted by the Trustees. The Trustees may require additional signatures as they deem necessary.

4. **Employment Rights**

Nothing in this Trust Agreement shall give any Employee the right to be retained in the employment of any Employer, and any employer-employee relationship shall continue in the same manner as this Trust had not been executed.

**ARTICLE IX: RIGHTS AND LIABILITIES**

1. **Trust Liability**

Except as herein expressly provided, the Trust Fund shall in no manner be liable for or be subject to the debts, contracts or liabilities of any insurer, the Union, any Employer or group or Association of Employers, any Employee, or any Trustee, except in his capacity as Trustee.

**BAY AREA UNION ROOFING CONTRACTORS  
WORKERS' COMPENSATION INSURANCE TRUST AGREEMENT**

2. Rights of Beneficiaries and Assignments

No Employee nor any beneficiaries shall have any right, title or interest to any assets of the Fund except in accordance with this Trust Agreement, any regulations and rules adopted thereto, or any projects and plans adopted pursuant to this Agreement, and then the person's rights shall be limited to the assets of the Trust. No beneficiary shall have the right to assign or encumber any Trust assets.

3. Liability of Parties

Except as expressly set forth in the Collective Bargaining Agreement, ADR Agreement, or in this Trust Agreement, neither the Employer, nor the Union, nor any representative thereof, shall be liable or responsible for (1) the validity of the Trust Agreement; (2) any debts, obligations or liabilities of the Trust; or (3) any action or inaction of the Trustees on agency principles or otherwise. Employees and their bargaining representatives shall have only such liabilities to the Trust as are set forth or authorized hereunder, under the Collective Bargaining Agreement, ADR Agreement, or as specifically imposed by applicable law.

4. Severability

If any of the foregoing provisions should be held by a court of competent jurisdiction to be invalid or illegal, the remaining provisions shall nevertheless be given effect insofar as the law permits, it being the intention that any invalid provisions are severable from the others.

**ARTICLE X: AMENDMENT TERMINATION AND MERGER**

1. Amendments

This Trust Agreement may be amended by the Trustees from time to time effective as of any prior, current or future date.

2. Termination

This Trust Agreement shall remain in effect for the period set forth in the ADR Agreement unless otherwise terminated by unanimous consent of the Trustees.

3. Termination Upon Adverse IRS Determination

In the event the Trust created by this Agreement pursuant to Section 302(c) of the Taft-Hartley Act fails to qualify as a tax exempt qualified Trust under the applicable Internal Revenue Code provisions, the parties shall meet for the purpose of allocating the fund to purposes permitted under the law as agreed to by the parties.

**BAY AREA UNION ROOFING CONTRACTORS  
WORKERS' COMPENSATION INSURANCE TRUST AGREEMENT**

4. Merger

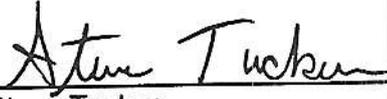
The Trust may be merged or consolidated with other trusts providing similar benefits. Merger shall be accomplished in the same manner as amendment.

Executed this 1<sup>st</sup> day of September, 2003

Associated Roofing Contractors  
Of the Bay Area Counties, Inc.

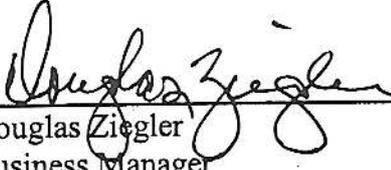
Local Union No. 40, United Union of  
Roofers, Waterproofers and Allied  
Workers, AFL-CIO

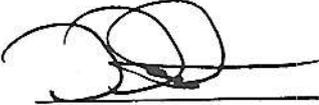
  
\_\_\_\_\_  
William T. Callahan, Jr. Ph.D.  
Executive Director

  
\_\_\_\_\_  
Steve Tucker  
Business Manager

Local Union No. 81, United Union of  
Roofers, Waterproofers and Allied  
Workers, AFL-CIO

Local Union No. 95, United Union of  
Roofers, Waterproofers and Allied  
Workers, AFL-CIO

  
\_\_\_\_\_  
Douglas Ziegler  
Business Manager

  
\_\_\_\_\_  
Dan Smith  
Business Manager



# RULES OF THE BAY AREA UNION ROOFING CONTRACTORS WORKERS' COMPENSATION TRUST

## RULES OF THE BAY AREA UNION ROOFING CONTRACTORS WORKERS' COMPENSATION TRUST ALTERNATIVE DISPUTE RESOLUTION PROGRAM

Pursuant to the provisions of California Labor Code Section 3201.5 the Bay Area Union Roofing Contractors Workers' Compensation Trust Alternative Disputes Resolution Program replaces all of those dispute resolution processes contained in Division 4 of the California Labor Code. The **Joint** Board of Trustees of the Bay Area Union Roofing Contractors Workers' Compensation Trust may change these rules at any time. These rules are intended to facilitate and expedite the resolution of disputes involving work-related injuries.

The terms "**Joint** Board of Trustees", "**Joint Board**", "Trustees", "Trust" or "Board" shall mean the "**Joint** Board of Trustees of the of the Bay Area Union Roofing Contractors Workers' Compensation Trust. Insofar as the **Joint** Board of Trustees may, in its discretion, delegate the authority to perform specified functions in connection with the administration of the rules set forth herein, these terms shall also mean its designee(s) for such purposes.

### **ARTICLE I Pre-Arbitration Discovery:**

**Section 1.1** Pre-Arbitration discovery shall be allowed in the same manner as discovery is permitted in California Labor Code Section 5710, provided any references therein to the appeals board or workers' compensation judges shall be deemed to be references to the Trust, Mediators or Arbitrators as the context so requires.

**Section 1.2** Upon the filing of a claim of workers' compensation injury with any contributing member of the Trust, it shall be the duty of all parties to immediately serve upon all opposing parties, as the case may be, and within the limits prescribed by applicable state and federal medical information privacy laws and regulations, copies of all medical reports in their possession or under their control, or that may come into their possession or under their control.

### **ARTICLE II Ombudsman:**

**Section 2.1** For evidentiary and discovery purposes, the Ombudsman shall be considered a Mediator pursuant to Sections 703.5 and 1152.5 of the California Evidence Code.

### **ARTICLE III Commencing Mediation:**

**Section 3.1** Provided a dispute has been submitted to the Ombudsman and it has not been resolved within 10 working days of the Ombudsman receiving sufficient information upon which to proceed, or such period mutually agreed upon between the employee and the employer, either party may commence mediation. When used in any of the mediation and arbitration rules, policies, and procedures, the word "employer" also refers to the employer's workers'

## **RULES OF THE BAY AREA UNION ROOFING CONTRACTORS WORKERS' COMPENSATION TRUST**

compensation insurance carrier. Failure to timely file a request for mediation shall bar any further right to adjudicate the issue or issues submitted to the Ombudsman.

**Section 3.2** Either party may request the Ombudsman to assist in the filing of a request for mediation.

**Section 3.3** The request for mediation shall be filed with the Trust on the "Request for Mediation" form, a copy of which is attached to these procedures.

**Section 3.4** The Ombudsman shall sign the "Request for Mediation" form certifying that the dispute or issue which is the subject of the mediation request was presented to the Ombudsman for resolution but that the Ombudsman was unable to resolve same. It shall also certify that the "Request for Mediation" form is or is not being filed timely (not more than 60 calendar days following notification to the Ombudsman of the dispute).

**Section 3.5** At the time of filing the request for mediation the Ombudsman shall serve upon the other party or parties a copy of the "Request for Mediation" form by mail, facsimile transmission, or other means to assure receipt within 3 days.

### **ARTICLE IV Processing the "Request for Mediation":**

**Section 4.1** Upon receipt of the "Request for Mediation" form the Trust shall:

- a. Endorse the Request as filed and assign a Trust Mediation number to the case.
- b. Within three working days assign a Mediator to the case from the list of mediators approved by the Trust and send notification to the Mediator of such assignment together with a copy of the "Request for Mediation" form. The proposed Mediator shall advise the Trust within 5 days of his or her acceptance of the assignment. If the Mediator does not accept the assignment, another Mediator shall be assigned in the same manner as set forth herein, until a Mediator accepts the assignment.

### **ARTICLE V Mediator:**

**Section 5.1** The Mediator shall promptly contact the parties involved in the dispute in a manner consistent with resolving the dispute within ten days from the date of acceptance of the assignment. The time for completing mediation may be extended by mutual agreement of the employer and employee.

**Section 5.2** The parties shall be personally involved in the mediation and may not address the Mediator solely through a representative, provided, however, notwithstanding this limitation, the employer may be represented by the claims examiner assigned to the employee's claim.

**Section 5.3** The Mediator shall take whatever steps the Mediator deems reasonable to bring the dispute to an agreed conclusion within the time allowed for completing the mediation, including scheduling mediation sessions, implementing means to discuss the dispute with the parties individually or collectively, requiring a party or parties to provide additional documentation or information, or appointing an authorized health care professional to assist in the resolution of any medical issue.

## RULES OF THE BAY AREA UNION ROOFING CONTRACTORS WORKERS' COMPENSATION TRUST

**Section 5.4** Within ten calendar days of completion of the mediation process, the Mediator shall file with the Trust the "Mediator's Statement of Completion and Result" and serve a copy of it on the parties.

### ARTICLE VI Arbitration:

**Section 6.1** The Arbitrator or Arbitrators (hereinafter referred to as "the Arbitrator") approved by the Trustees of the Bay Area Union Roofing Contractors Workers' Compensation Trust is or are vested with full power and authority and jurisdiction to try and determine finally all the matters specified in Section 5300 of the California Labor Code, subject only to review by the Workers' Compensation Appeals Board of the State of California and the courts specified in Division 4 of the California Labor Code as having powers of review of determinations of the appeals board. The Arbitrator shall apply California law, both decisional and statutory, except as modified herein under the authority of California Labor Code Section 3201.5, in rendering his or her decision. The rules of arbitration herein are in lieu of the rules of the American Arbitration Association.

**Section 6.2** All orders, rules, findings, decisions, and awards of the Arbitrator shall be prima facie lawful and conclusively presumed to be reasonable and lawful, until and unless they are modified or set aside by the appeals board or upon a review by the courts within the time and in the manner specified in Division 4 of the California Labor Code.

**Section 6.3** There is but one cause of action for each injury coming within the Bay Area Union Roofing Contractors Workers' Compensation Alternative Dispute Resolution program (hereinafter "the Program"). All claims brought for medical expense, disability payments, death benefits, burial expense, liens, or any other matter arising out of such injury may, in the discretion of the Arbitrator, be joined in the same proceeding at any time; provided, however, that no injury, whether specific or cumulative, shall, for any purpose whatsoever, merge into or form a part of another injury; nor shall any award based on a cumulative injury include disability caused by any specific injury or by any other cumulative injury causing or contributing to the existing disability, need for medical treatment or death. Notwithstanding the foregoing, the rule established in the case of *Wilkinson v WCAB* (1977) 19 C3d491, 138 CR 696, 42 CCC 406, shall govern combining permanent disabilities that become permanent and stationary at the same time.

**Section 6.4** The Arbitrator has jurisdiction over any controversy relating to or arising out of medical and hospital treatment as between the parties and others.

**Section 6.5** The Arbitrator has jurisdiction over all controversies arising out of injuries suffered without the territorial limits of California in those cases where the injured employee is a resident of this state at the time of the injury and the contract of hire was made in this state. Any such employee or his dependents shall be entitled to the compensation or death benefits provided by the Program.

**Section 6.6** The death of an employer subsequent to the sustaining of any injury by an employee shall not impair the right of the employee to proceed within the Program against the estate of the employer, and the failure of the employee or his dependents to cause the claim to be presented to the executor or administrator of the estate shall not in any way bar or suspend such right.

## **RULES OF THE BAY AREA UNION ROOFING CONTRACTORS WORKERS' COMPENSATION TRUST**

**Section 6.7** The Arbitrator may appoint a trustee or guardian ad litem to appear for and represent any minor or incompetent upon the terms and conditions which he or she deems proper.

**Section 6.8** The Arbitrator may provide for the joinder in the same proceeding of all persons interested therein, whether as employer, insurer, employee, dependent, creditor, service provider or otherwise.

### **ARTICLE VII Settlements:**

**Section 7.1** Any case may be settled upon submission of the proposed settlement to the Trust. The proposed settlement shall be set forth either upon the forms approved by the Trust and entitled "Compromise & Release Agreement" or "Stipulation with Request for Award". Upon receipt of a fully executed proposed settlement, the Trust shall forward it to an Arbitrator for review for adequacy and approval.

**Section 7.2** Upon receipt of a proposed settlement, the Arbitrator shall act independently and, in issuing orders or awards, shall either:

- a. Approve the proposal as submitted and issue an appropriate order or award and serve same on the parties and the Trust.
- b. Reject the proposal and specify the reasons therefor in writing and serve same on the parties and the Trust; or
- c. Contact the parties by telephone or writing and suggest amendments that would qualify the proposal for approval.

If the Arbitrator elects to proceed under subsection "c." above, the parties shall have 5 working days to notify the Arbitrator of his, its, or her acceptance or rejection of the suggested amendments. If accepted, the Arbitrator shall hold the file for not more than 20 working days for receipt of the appropriately amended agreement. If rejected, the Arbitrator shall immediately return the file to the Trust and advise the parties and the Trust in writing that the proposed settlement was unacceptable and state the reasons therefor.

### **ARTICLE VIII Commencing Arbitration:**

**Section 8.1** Within 30 calendar days following the filing of the "Mediator's Statement of Completion and Result" any party not satisfied with the outcome of mediation must file with the Trust a request that the matter be referred to arbitration. Failure to timely file the request for referral to arbitration of the disputed issue or issues submitted to the Mediator shall bar any further right to adjudicate such disputed issue or issues.

**Section 8.2** Upon receipt of the request for arbitration the Trust shall:

- a. Endorse the request as filed and assign a Trust Arbitration number to the case and forthwith serve a copy thereof upon all adverse parties.
- b. Within three working days assign an Arbitrator from the list of arbitrators approved by the Trust and send notification to the proposed Arbitrator of such assignment together with a copy of the Request for Arbitration form. The proposed Arbitrator shall advise the Trust within ten days of the sending of the notification of his or her acceptance of the assignment. If the Arbitrator does not accept the assignment, another Arbitrator shall be

## RULES OF THE BAY AREA UNION ROOFING CONTRACTORS WORKERS' COMPENSATION TRUST

assigned in the same manner as set forth herein, until an Arbitrator accepts the assignment.

**Section 8.3** Upon receipt of notice of acceptance of the assignment from the Arbitrator to the Trust, the Trust shall consult with the parties and allow them 30 days to retain and/or consult with legal counsel. The Trust shall set the date of hearing not more than 60 days from the date the Arbitrator accepts assignment and give notice of the date, time and place for hearing. Notwithstanding the foregoing, the hearing date may be set at any time if agreed upon by the parties and approved by the Arbitrator.

a. The Trust shall fix the place of hearing in a locale giving priority consideration to the county of residence of the employee.

b. Notice of time and place for hearing shall be given by the Trust by mailing to each party notice thereof at least twenty calendar days in advance, unless the parties agree otherwise.

c. An attorney may represent any party to the hearing. A party intending to be represented by an attorney shall notify the other party or parties and the Trust of the name and address of such attorney not less than 5 days prior to the date set for the hearing at which the attorney is first to appear.

### ARTICLE IX Hearing:

**Section 9.1** The Trust shall arrange for an official record to be made of the proceedings at hearing, the cost of which shall be paid by the employer. The cost of any transcription shall be borne by the requesting party.

**Section 9.2** It shall be the responsibility of any party producing a witness requiring an interpreter to arrange for the presence of a qualified interpreter as such is defined in California Labor Code Section 5811(b) and fees shall be allowed in accordance with said Labor Code section.

**Section 9.3** The Arbitrator shall maintain the privacy of the hearing unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend the hearing. The Arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the Arbitrator to determine the propriety of the attendance of any other person.

**Section 9.4** The Arbitrator may, for good cause, postpone the hearing upon the request of a party or upon the arbitrator's own initiative, and shall grant such postponement when all of the parties agree thereto.

**Section 9.5** Before proceeding with the first hearing the Arbitrator shall take an oath of office. The Arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if required by law or requested by either party, shall do so.

**Section 9.6** Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or counsel who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party. The Arbitrator shall require the party who is present to submit such evidence as is deemed necessary for the making of an award.

## RULES OF THE BAY AREA UNION ROOFING CONTRACTORS WORKERS' COMPENSATION TRUST

**Section 9.7** If a Request for Arbitration form shows upon its face that the requestor is not entitled to compensation, the Arbitrator may, after opportunity to the requestor to be heard orally or to submit his or her claim or argument in writing dismiss the request for arbitration without any hearing thereon. Such dismissal may be upon the motion of the Arbitrator or upon the motion of the adverse party. The pendency of such motion or notice of intended dismissal shall not, unless otherwise ordered by the Arbitrator, delay the hearing on the request for arbitration upon its merits.

**Section 9.8** Order of Proceedings at the arbitration hearing shall be as follows:

- a. The filing of the oath of the Arbitrator shall open the hearing, where required.
- b. The place, time and date of the hearing and the presence of the Arbitrator, the parties, and counsel, if any; and by the receipt by the Arbitrator of the statement of the claim and answer, if any, shall be recorded.
- c. The Arbitrator may, at the beginning of the hearing, ask for the statements clarifying the issues involved. The claimant shall then present its claims, proofs, and witnesses, who shall submit to questions or other examination. The Arbitrator has discretion to vary this procedure but shall afford full and equal opportunity to the parties for the presentation of any material or relevant proofs. The Arbitrator shall fully develop the record.
- d. Exhibits, when offered by either party, may be received in evidence by the Arbitrator.
- e. The name and addresses of all witnesses and exhibits in the order received shall be made part of the record.
- f. The parties may, by written agreement, provide for the waiver of oral hearings.

**Section 9.9** The rules of evidence shall be as follows:

- a. The parties may offer such evidence as is relevant and material to the dispute and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the dispute. The Arbitrator is authorized to subpoena witnesses or documents and may do so upon the request of any party or independently.
- b. The Arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. All of the evidence shall be taken in the presence of the Arbitrator and all of the parties, except where any of the parties is absent in default or waives the right to be present.
- c. Within the limits prescribed by applicable state and federal medical information privacy laws and regulations, any party intending to offer any medical report or record at the hearing must provide the other party with a copy at least twenty days in advance thereof, unless the Arbitrator finds good cause for failure to do so.
- d. The Arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the Arbitrator deems it entitled to after consideration of any objection made to its admission.
- e. If the parties agree or the Arbitrator directs that documents are to be submitted to the Arbitrator after the hearing, they shall be filed with the Trust for transmission to the Arbitrator. The filing party shall serve the other party or parties with copies of same at the time of filing.
- f. The Arbitrator may in his or her sole discretion appoint an authorized health care professional to assist in the resolution of any medical issue.

**Section 9.10** Unless the parties otherwise agree, the arbitration proceeding shall be completed within 30 days after the first hearing, which is deemed to be the date of referral. The Arbitrator

## RULES OF THE BAY AREA UNION ROOFING CONTRACTORS WORKERS' COMPENSATION TRUST

shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the Arbitrator shall declare the hearing closed and submitted for decision. Such closing and submission shall be made a part of the record of proceedings. If briefs are to be filed, the hearing shall be declared to be closed and submitted as of the final date set by the Arbitrator for the receipt of briefs. If post-hearing filing of evidentiary documents is allowed by the Arbitrator and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing and submission for decision. The time limit within which the Arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearing and submission for decision.

**Section 9.11** The hearing may be reopened by the Arbitrator at his or her discretion, or for good cause upon the application of any party at any time before the Arbitrator files his or her decision and award. However, if reopening the hearing would extend completion of the proceedings beyond thirty days from the date of the first hearing the hearing shall not be reopened, unless the parties agree otherwise.

**Section 9.12** The Arbitrator shall, within ten working days of closing the hearing and submission of the case, make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.

### ARTICLE X Findings and Awards:

**Section 10.1** All awards of the Arbitrator either for payment of compensation or for the payment of death benefits, shall carry interest at the same rate as judgments in civil actions on all due and unpaid payments from the date of the making and filing of said award. As to amounts which by the terms of the award subsequently become due in installments or otherwise, such interest shall run from the date each such amount becomes due and payable.

**Section 10.2** The Arbitrator in his or her award may fix and determine the total amount of compensation to be paid and specify the manner of payment, or may fix and determine the weekly disability payment to be made and order payment thereof during the continuance of disability.

**Section 10.3** The Program has continuing jurisdiction over all orders, decisions, and awards made and entered under its authority and pursuant to the provisions of California Labor Code Section 3201.5. At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the Arbitrator may rescind, alter, or amend any order, decision, or award, good cause appearing therefor. This power includes the right to review, grant or regrant, diminish, increase, or terminate, within the limits prescribed for workers' compensation administrative law judges by Division 4 of the California Labor Code, any compensation awarded, upon the grounds that the disability of the person in whose favor the award was made has either recurred, increased, diminished, or terminated.

**Section 10.4** The certified copy of the findings and order, decision, or award of the Arbitrator as filed with the Trust and a copy of the judgment constitute the judgment-roll of the Trust. The pleadings, all orders of the Arbitrator, Arbitrator's original findings and order, decision, or award,

## RULES OF THE BAY AREA UNION ROOFING CONTRACTORS WORKERS' COMPENSATION TRUST

and all other papers and documents filed in the cause shall remain on file in the Office of the Trust.

**Section 10.5** The Arbitrator shall have the same authority as workers' compensation administrative law judges with respect to California Labor Code Sections 5813, 5814, and 5814.5 including, but not limited to, those relating to bad faith actions or tactics, liability for additional expenses, and unreasonable delay or refusal of payment of compensation.

**Section 10.6** Every order, decision, or award, other than an order merely appointing a trustee or guardian, shall contain a determination of all issues presented for determination by the Arbitrator prior thereto and not theretofore determined. Any issue not so determined will be deemed decided adversely as to the party in whose interest such issue was raised.

### ARTICLE XI Attorney's Fees:

**Section 11.1** Pursuant to the ADR Agreement, the parties to the Program have determined the reasonable attorney's fee is an amount not greater than 12% of the permanent disability award.

**Section 11.2** None of the parties will be permitted to be represented by legal counsel at the ombudsman stage or mediation stage of the proceedings. All the communications between the Ombudsman or Mediator and any of the parties shall be directly with the parties, and not through legal counsel. This provision is not intended to limit any party's right to obtain legal advice. Any party has a right to legal advice at such party's own expense. The participation of legal counsel during any proceedings under this program is limited to arbitration, provided a "Request for Arbitration" form has been timely filed with the Bay Area Union Roofing Contractors Workers' Compensation Trust Fund

**Section 11.3** The Arbitrator shall make a finding as to which party is the prevailing party in the arbitration proceeding. If the employee is found to be the prevailing party the Arbitrator shall set the attorney's fee at no greater than 12% of the permanent disability award and order the attorney's fee to be paid by the employer. If the employee is not found to be the prevailing party, the Arbitrator shall set the attorney's fee at no greater than 12% of the permanent disability award and order the attorney's fee to be withheld from the employee's award and paid to the employee's attorney.

a. In nearly all cases the employee will prevail to some extent, as "take nothing" awards are rare. In order for the employee to be the "prevailing party" to support an award of attorney fees over-and-above the award for permanent disability, all of the following conditions must be found to exist:

(1) The issue of percentage of permanent disability must be disputed and be addressed at the requested arbitration.

(2) There must have been an offer or demand to settle the percentage of permanent disability made at mediation. The final report of the Mediator shall be filed with the Trust and Arbitrator and shall be admitted as evidence for the purpose of determining the extent to which an offer or demand to settle was made at mediation.

(3) A final written offer or demand for settlement made by the employee must be filed with the Trust and Arbitrator and served on the opposing party not less than 20 days prior to the date set for arbitration hearing.

(4) The issue of permanent disability must be resolved on a written medical report issued and served on the parties not less than 30 days prior to the date set for the arbitration

## RULES OF THE BAY AREA UNION ROOFING CONTRACTORS WORKERS' COMPENSATION TRUST

hearing. Such written medical opinion must describe (1) the condition of the employee as permanent and stationary, and (2) the factors of permanent disability. Such medical opinion must have been rated by one of the disability evaluation specialists (raters) authorized by the Trust and the awarded percentage of permanent disability shall be based on such rating.

(5) The percentage of permanent disability awarded by the Arbitrator through settlement or after hearing and conclusion of the arbitration must be equal to or greater than the employee's final written settlement offer or demand, which was filed and served as required by (3) above.

b. The employee will be responsible for the payment of any portion of an award of attorney fees that exceeds 12% of the permanent disability award. The excess amount shall be deducted from any benefits due, or that may become due, the employee."

c. A copy of this Section shall be served on all parties at the time for service of "Notification of Mediation Rights" and "Notification of Arbitration Rights".

**Section 11.4** The employee and the attorney may agree to a fee in excess of the 12% maximum, provided the attorney submits evidence to the Arbitrator justifying such excess fee. Such evidence shall include a copy of a written fee agreement between the employee and the attorney, and itemization of personal time involved in activities relating to advancing the employee's cause, which shall include good faith settlement efforts. Should the Arbitrator make specific findings of fact to support an order granting such excess fee, any excess fee shall be withheld from the employee's award and paid to the attorney.

### **ARTICLE XII Division 4 of California Labor Code - Provisions Included Herein by Reference:**

**Section 12.1** The following additional provisions of Division 4 of the California Labor Code are included herein by this reference, provided whenever the terms appeals board and workers' compensation administrative law judge are used therein, they shall refer to the Arbitrator and/or the Program as the context so requires:

a. Labor Code Section 3201.5 and those Labor Code Sections referenced therein.

b. Labor Code Sections 3202 Liberal Construction; 3202.5 - No Relief From Meeting Burden of Proof; 3204 - Definitions Govern Construction; the Definitions contained in Part 1, Chapter 1; 3208.2 - Multiple Injuries - Questions of Fact, Law Separately Determined; 3208.3 - Psychiatric Injury-Determination of Compensability; 3208.4 - Injury Arising Out of Alleged Sexual Conduct - Relevance of Past Sexual Conduct; 3209.7 - Employee Injuries - Agreements for Additional Treatment; 3209.8 - Treatment Shall Include Counseling; Definitions contained in Part I, Chapter 2; 3600 - Compensation Liability - Requirements; 3601 - Compensation Exclusive Remedy; 3602 - Concurrence of Conditions of Compensation 3603 - Payment of Compensation - Discharges all Claims; 3604 - Violation of Employee Hiring Laws - No Defense; 3605 - Minors - Payment of Compensation; Definitions and indemnity compensation schedules contained in Part 2, Chapters 1 and 2; 4551 - Employee Misconduct - Compensation Reduction; 4552 - Compensation Reduction - Arbitrator Determination; 4553 - Employer Misconduct - Compensation Increase; 4553.1 - Employer Misconduct - Required Findings; 4555.5 - Petition for Award Reduction - Denial; 4556 - Increases Not Limited; 4557 - illegally Employed Minors - Compensation Increased; 4903 - Allowable Liens Against Compensation; 4903.1 - Compromise of Claims - Reimbursement for Benefits Paid; 4907 - Privilege to Appear in Appeals Board Proceedings - Denial; 5001 - Release of Liability - Approval Required; 5002 Release, Compromise Agreement - Filing; 5300 -

Proceedings to be Instituted Before the Appeals Board; Part 4, Chapter 2, Limitations of Proceedings; 5710 - Deposition of Witnesses.

**ARTICLE XIII MEDICAL EXAMINATIONS:**

**Section 13.1** Notwithstanding any provision in these Rules or the law to the contrary the procedure for obtaining a second medical opinion arising from a dispute over the treating physician's findings shall be as follows:

a. The party disputing the treating physician's findings shall contact the Ombudsman and describe the nature of the dispute. The Ombudsman shall thereupon assist in the completion of a "Request for Qualified Medical Evaluation" form and provide such to the Trust.

b. If the injured worker disputes the treating physician's findings, the Trust shall forthwith provide a panel of three physicians, each certified by the State of California, Industrial Medical Council to be a Qualified Medical Evaluator (QME), to the injured worker. The injured worker shall select a physician from the panel to prepare a medical evaluation on all related issues in dispute. The injured worker shall be responsible for making an appointment with the selected QME as soon as reasonably possible, and shall immediately notify the Trust of the QME selected, and the date and time of the appointment.

c. If the employer disputes the treating physician's findings, the employer shall select a State of California, Industrial Medical Council certified Qualified Medical Evaluator. The QME so selected shall be located in reasonable proximity to the zip code of the injured worker's residence. The employer shall be responsible for making an appointment with the QME as soon as reasonably possible, and shall immediately notify the Trust and the injured worker of the QME selected, the date and time of the appointment.

d. The evaluation report(s) of the QME selected by the injured worker and/or the employer and the report(s) of the treating physician(s) shall be the only admissible reports obtained by the employer or injured worker.

e. The provisions of California Labor Code sections 4050 through 4056 related to medical examinations and required cooperation by the injured worker are incorporated herein by reference. Whenever the terms administrative director, appeals board or administrative law judge are used therein, they shall refer to the Arbitrator and/or the Program as the context so requires.