

**Alternative Dispute Resolution ("ADR ") Agreement  
Between Locals 40, 81 and 95 of the  
United Union of Roofers, Waterproofers & Allied Workers, AFL-CIO  
and Associated Roofing Contractors  
of the Bay Area Counties, Inc.**

This Agreement is made and entered into the 1<sup>st</sup> day of September, 2003, by and between the signatory Union Locals (as listed on Attachment "A" of this Agreement) of the United Union of Roofers, Waterproofers & Allied Workers, AFL-CIO (hereinafter referred to as the "UNION") and the signatory members of Associated Roofing Contractors of the Bay Area Counties, Inc. (hereinafter referred to as the "ASSOCIATION"). The term "parties" as used herein shall refer to the ASSOCIATION and the UNION. It shall apply only to contracting firms who sign a Memorandum of Understanding to be bound by the terms of the Agreement. The Joint Board of Trustees of the Trust established under this Agreement may change, alter or amend this list at any time.

**ARTICLE**

**INTENT & PURPOSE**

It is the intent and purpose of this Agreement to:

- 1.1 Provide union roofing contractor employees who claim compensation for bodily injuries and occupational diseases (hereinafter referred to as "injuries") under the California Workers' Compensation Law (hereinafter referred to as the "Law") with improved access to high-quality medical care, and
- 1.2 Reduce the number and severity of disputes between employees and the workers' compensation benefits provider resulting from such injuries, and
- 1.3 Provide an efficient and effective method of dealing with such disputes by utilizing the provisions of Labor Code Section 3201.5 to establish a system of medical care delivery and dispute prevention and resolution which may be used by any contractor located in the State of California who is signatory to a collective bargaining agreement with the parties to this Agreement.

**ARTICLE II**

**PARTIES TO AGREEMENT**

2.1 This agreement which was negotiated by the ASSOCIATION and the UNION shall apply to all firms that are signatory to a collective bargaining agreement other than a project labor agreement and that are Regular Members of the Association or that are eligible for and have applied for membership in the Association who sign a memorandum of understanding (Attachment "H") to be bound by this Agreement. The term "employer" as used herein, shall refer to any such firm. The ASSOCIATION and the UNION understand that in order for an employer to be offered a workers' compensation insurance policy pursuant to this Agreement, the firm must also satisfy both the eligibility criteria set forth in Labor Code Section 3201.5 and the underwriting criteria established by the insurance company issuing the policy and the Joint

## **BAY AREA UNION ROOFING CONTRACTORS ADR AGREEMENT**

Board of Trustees of the Bay Area Union Roofing Contractors Workers' Compensation Trust Fund.

### **SCOPE OF AGREEMENT**

2.2 This Agreement shall apply only to injuries as defined by the Law sustained by employees covered by UNION collective bargaining agreements (other than project labor agreements) during their employment by an employer located in California during the term of this Agreement.

### **TERM OF AGREEMENT**

2.3 This Agreement shall remain in effect for a period of three years from the date of its execution by the parties. It shall continue in effect from year to year thereafter unless terminated by either party to the Agreement in the manner provided herein.

### **TERMINATION OF AGREEMENT**

2.4 (a) Either party desiring to terminate this Agreement must notify the other, and the Trust established under this Agreement, (hereinafter referred to as the "Trust") in writing, not less than 90 days prior to the expiration date of this Agreement or any subsequent anniversary date thereafter.

(b) An employer considering withdrawing from this Agreement may do so upon the anniversary date of an insurance policy issued pursuant to this Agreement, provided that the employer notifies the parties and the Trust, in writing, not less than 90 days prior to said insurance policy's anniversary date that the employer intends to seek bids from other insurers and may wish to withdraw from this Agreement.

Upon such termination, or withdrawal, any case involving an injury covered by an insurance policy issued during the term of the Agreement, or during the term this Agreement was applicable to the withdrawing employer, shall continue and be resolved subject to the terms of this agreement.

### **COMPLETE AGREEMENT**

2.5 This Agreement represents the complete understanding of the parties with respect to the subject matter dealt with herein.

### **CONFLICT IN LAW**

2.6 In any instance of conflict, the provisions of this Agreement shall take precedence over provisions of the Law, so far as permitted by the provisions of Labor Code Section 3201.5 of the State of California.

### **LABOR-MANAGEMENT SAFETY & HEALTH COMMITTEE**

2.7 There shall be a labor-management safety and health committee established. The UNION shall appoint one member for each participating Local and the ASSOCIATION Board of Directors shall appoint a corresponding number of members to this Committee. The terms of the

## BAY AREA UNION ROOFING CONTRACTORS ADR AGREEMENT

appointees shall run concurrent with the term of this Agreement. The Committee shall promulgate rules for its operation.

The Committee shall be responsible for developing and administering a comprehensive Safety Program designed to foster improvements in occupational safety and health and other working conditions in the roofing industry. The Safety Program shall include, but not be limited to, the following elements:

- Evaluation (and, if necessary, mandatory remediation) of participating employers' written safety programs required under California law and regulations to ensure that they are at least as effective as the Association's "Model Injury and Illness Prevention Program for Roofing Contractors";
  - Evaluation (and, if necessary, mandatory remediation) of other written safety programs required under California law or regulations that are applicable to participating employers' specific operations (i.e., Hazard Communication, Respiratory Protection, etc.);
  - Regular, mandatory safety inspections of participating employers' job sites to ensure compliance with applicable safety and health regulations;
  - Mandatory abatement of any regulatory violations or departures from safe work practices found during job site safety inspections;
- Investigation of accidents resulting in injuries to participating employers' employees and the provision of remedial training deemed necessary to minimize the likelihood of recurrence of the same or similar accidents and injuries; and
- The provision of other safety training and loss control services as directed by the Committee or the Trust, or as requested by participating employers.

The Association's Director of Safety and Compliance Services shall serve as professional staff to and take direction from the Committee, and shall report on his loss control activities at both Committee and Trust meetings. Reasonable compensation may be provided to the Association by the Trust as reimbursement for the cost of the activities undertaken by the Association's Director of Safety and Compliance Services.

### EXCLUSIVE VOCATIONAL REHABILITATION PROVIDERS

2.8 The parties to this Agreement have developed an exclusive list of vocational rehabilitation providers attached hereto and marked Attachment "B". The Joint Board of Trustees of the Trust established under this Agreement may, with the agreement and acceptance of the participating insurance carrier(s), change, alter or amend this list at any time.

### FEE SCHEDULES

2.9 The parties to this Agreement agree that it is in their mutual best interest to establish a fee schedule limiting the fees which may be charged for medical treatments, vocational rehabilitation, mediation, arbitration, attorneys fees, providing documents and narratives, and any other associated costs to workers' compensation claims. This "Fees Schedule" list is

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attached hereto and marked Attachment "C". The Joint Board of Trustees of the Trust may, with the agreement and acceptance of the participating insurance carrier(s), change, alter or amend this list at any time.

### ARTICLE III

#### AUTHORIZED MEDICAL PROVIDERS

3.1 All medical and hospital services required by employees subject to this Agreement as the result of a compensable workers' compensation injury, shall be furnished by health care professionals and facilities selected by the employee from a list of health care professionals and facilities. The Joint Board of Trustees for the Trust shall select the "Authorized Providers" subject to this Agreement. This Authorized Providers list is attached hereto and marked Attachment "D". The Authorized Providers shall include, but not be limited to, the local health and welfare trust preferred provider network. The Joint Board of Trustees for the Trust may, with the agreement and acceptance of the participating insurance carrier(s), change, alter or amend this list at any time. Any health care professionals not listed on the approved list of authorized providers may be submitted to the Joint Board of Trustees for review and inclusion. All "Authorized Providers" shall be board certified in their respective specialties, assuming that such is available in the geographic area.

3.2 In case of an emergency when no authorized provider is readily available, the employee may obtain treatment from a health care professional or facility not otherwise authorized by this agreement. The employer or its insurance carrier shall transfer responsibility for further or continuing treatment to an authorized provider as soon as possible, consistent with sound medical practices.

3.3 After selecting an authorized provider to furnish treatment for a particular injury, an employee may change once to another authorized provider.

3.4 When referred by the authorized provider to another provider in a particular specialty, the employee may also change once to another authorized provider in such specialty. Additional changes will be made only with written agreement of the employer.

3.5 Neither the employer nor its insurance carrier shall be responsible for the cost of medical services furnished by a health care professional or facility not authorized pursuant to this Agreement. Nothing in this Article shall be construed to create a right for an employee to receive care at employer obligation or expense that is not reasonably required to cure or relieve a work related injury.

3.6 The list of authorized providers shall include, but not be limited to, providers within the following specialties:

- Cardiology
- Chiropractic
- Dermatology
- General Practice
- Internal Medicine
- Neurosurgery
- Neurology Occupational Medicine
- Oncology

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Ophthalmology  
Orthopedics  
Psychiatry  
Pulmonary /Respiratory Radiology

3.7 The Joint Board of Trustees for the Trust may include providers from additional specialties or providers who are not specialists on the list of authorized providers. In the event that an authorized provider furnishing treatment to an employee determines that consultation or treatment is necessary from a specialty for which no authorized provider has been selected through this agreement, or in the event that distance makes it impractical for treatment from the authorized provider, the authorized provider and injured employee shall mutually select the additional specialist or the additional provider who offers treatment at a distance not greater than 40 miles in one direction for the employee.

### PRESCRIPTION MEDICINE PROVIDERS

3.8 All prescription medicines required by virtue of injury subject to this Agreement shall be furnished by the employer through a prescription medicine provider or providers agreed to by the Joint Board of Trustees for the Trust. This "Prescription Medicine Providers" list is attached hereto and marked Attachment "E". The Joint Board of Trustees for the Trust may change, alter or amend this list at any time by mutual agreement, except in those instances in which an authorized medical provider determines that due to time constraints or other valid medical reasons, use of another prescription source is required.

Generic forms of prescription medicines shall be provided unless the Authorized Medical Provider specifically specifies otherwise in writing.

### SECOND OPINIONS

3.9 Both the employer and the employee may request a second opinion from an authorized provider regarding diagnosis, treatment and evaluation of an injury. Only one such second opinion shall be permitted by either party for any injury.

### DISAGREEMENT WITH AUTHORIZED PROVIDER FINDINGS

3.10 The opinion and recommendations of the authorized provider selected in accordance with this agreement shall bind both the employer and the employee. In the event of disagreement with an authorized provider's findings or opinion, the sole recourse shall be to obtain a second opinion through dispute prevention and resolution procedures established in this agreement.

## ARTICLE IV

### DISPUTE PREVENTION AND RESOLUTION

The parties to this agreement acknowledge that the provisions of California law governing the adjudication of disputed Workers' Compensation claims have resulted in delay, increased expense and other inefficiencies which result in undue detriment to employees and employers. In recognition of the foregoing, the parties hereby establish the following exclusive Alternative Dispute Resolution System.

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4.1 The dispute prevention and resolution program will consist of three components:

1. Ombudsman
2. Mediation
3. Arbitration

4.2 This program shall replace all dispute resolution processes, to the maximum extent permitted by law including those authorized pursuant to California Labor Code Section 3201.5, subject to the following exception:

Disputes between a party to this agreement and a person or entity who is not subject to the provisions of this agreement by subscription or law, unless such third party or entity agrees in writing to submit to the jurisdiction of this dispute prevention and resolution program.

Any claim subject to this Agreement filed with the California Workers' Compensation Appeals Board (WCAB) for resolution will immediately be removed and placed within the program established by this Agreement. This is the sole means of dispute resolution and no dispute shall proceed to the WCAB until it has completed the Ombudsman, Mediation and Arbitration processes defined by this agreement.

### OMBUDSMAN

4.3 The Joint Board of Trustees for the Trust will select the Ombudsman. The Ombudsman shall receive complaints from employees who have filed claims for Workers' Compensation benefits subject to this Article and upon request of the employee shall assist the employee in attempting to resolve any disputes with the workers' compensation insurer of an employer. The Ombudsman shall, upon request of an employee, assist the employee in filing requests for Mediation and Arbitration related to alleged work-related injuries subject to this Article.

It is further understood and agreed that the Ombudsman shall be available at all times to employees as a source of information regarding any questions relative to the workers' compensation process and benefits available. A claim need not exist or be in dispute for an employee to request Ombudsman services. The Ombudsman shall further ensure that all services provided are readily accessible to both English and Spanish speaking employees.

An employee covered by this Agreement, who believes that they are entitled to treatment and/or benefits beyond those of an authorized provider's findings or opinion, shall notify the Ombudsman. The Ombudsman shall maintain a log recording all Ombudsman activity, including the date of each notification and the date of each response. The employer shall also be allowed to file disputes with the Ombudsman. A third party, not a party to this Agreement, may file a written request with the Ombudsman to assist in resolving disputes involving either or both of the parties hereto, provided the dispute is related to a claim of industrial injury covered by this Agreement.

The response of the Ombudsman to the employee shall be explained in terms that are readily understandable by the employee.

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### MEDIATION

4.4 If an issue cannot be resolved to the satisfaction of the employee within ten working days of the Ombudsman receiving sufficient information upon which to proceed, the employee shall apply for Mediation on the "Request For Mediation" form attached hereto and marked Attachment "F". The Ombudsman shall assist the employee in filing the application with the mediator. The employee and employer may mutually agree to extend the ten working day period. No issue will proceed to Mediation without first being presented to the Ombudsman. Failure to mediate will bar any further right to adjudicate the issue.

4.5 Application for Mediation shall be made not more than 60 calendar days after the Ombudsman has responded to the employee or employer's notification with an opinion or a proposed resolution. Any application for Mediation shall be assigned to a mediator selected under this Agreement within three 3 working days of receipt. The mediator will contact the parties to the dispute, including the insurance carrier, and take whatever steps the mediator deems reasonable to bring the dispute to an agreed conclusion.

4.6 The mediator shall be assigned by the Trust, or its designee for such purpose. The mediator subject to this Agreement shall be from the list determined by the Joint Board of Trustees for the Trust and who has experience with the California workers' compensation system. This "Authorized Mediators" list is attached hereto and marked Attachment "G". The Joint Board of Trustees for the Trust may, with the agreement and acceptance of the participating insurance carrier(s), change, alter or amend this list at any time.

4.7 Mediation shall be completed in not more than ten working days from the date of referral. In no event shall an issue be permitted to proceed beyond Mediation until and unless the moving party cooperates with the mediator and the Mediation process, or if both the employee and the employer mutually agree to an extension.

4.8 Neither party will be permitted to be represented by legal counsel at mediation. The fact that an employee or an employer representative or its workers' compensation insurer's representative has had legal training or is a licensed attorney shall not bar such person from participation in Mediation, unless he or she seeks to participate on the basis of an attorney-client relationship. All communications between the mediator and the parties shall be directly with the parties and not through legal counsel. This Agreement is not intended to limit any party's right to obtain legal advice. Any party has the right to legal advice and representation at such party's own expense. The participation of legal counsel during any proceedings under this program is limited to Arbitration, provided a written request for Arbitration has been timely filed with the Trust.

### ARBITRATION

4.9 Not more than 30 calendar days after completion of the Mediation process, any party not satisfied with the outcome must file with the Trust a request that the matter be referred for Arbitration. No issue will proceed to Arbitration without first have been referred to the Ombudsman and then having been mediated. Failure to arbitrate will bar any further right to adjudicate the issue. Upon receipt of such a request, the Trust shall immediately refer the matter for Arbitration as provided for herein. The Arbitration date will be set with sufficient advance notice to permit the parties to retain and/or consult with legal counsel.

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4.10 The arbitrator shall have experience and be knowledgeable in the California workers' compensation dispute process and shall have been at one time a certified specialist in workers' compensation law or a California Workers' Compensation Administrative Law Judge. The arbitrator shall be assigned by the Trust, or its designee for such purpose, from the list of arbitrators determined by the Joint Board of Trustees for the Trust. This "Authorized Arbitrators" list is attached hereto and marked Attachment "H". The Joint Board of Trustees for the Trust may, with the agreement and acceptance of the participating insurance carrier(s), change, alter or amend this list at any time.

In any case that has been assigned to an arbitrator for hearing hereunder, the arbitrator shall have full power, jurisdiction and authority to hear and determine all issues of fact and law presented and to issue interim, interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case. The decision of the arbitrator is subject to review by the Workers' Compensation Appeals Board (WCAB) in the manner required by Labor Code Section 3201.5, and shall have the same force and effect as an award, order, or decision of a Workers' Compensation Administrative Law Judge.

4.11 Arbitration will be conducted pursuant to the rules of the American Arbitration Association, or such other rules agreed to by the Trust, using the arbitrator assigned by the Trust. Unless the parties to the matter otherwise mutually agree, arbitration proceeding shall be completed in not more than 30 calendar days after referral, and an arbitration decision rendered within 10 working days of the completion of the proceedings. The arbitrator's decision shall be in written form consistent with the WCAB practices.

4.12 No written or oral offer, finding or recommendation made during the mediation process by any party or mediator shall be admissible in the arbitration proceedings except by mutual agreement of the parties.

4.13 Whenever the employee prevails at arbitration, either through the entry of a favorable arbitration decision or by agreement with the employer at any time subsequent to mediation, the employer shall pay a fee to the employee's attorney in an amount comparable to the prevailing wage of attorneys practicing in workers' compensation for the geographical area which the dispute has arisen.

The arbitrator may increase or decrease such fee based on the complexity of the dispute or the effort expended by the attorney. This amount shall not exceed 12% of the Permanent Disability (P. D.) award. The Arbitrator shall make a finding as to which party is the prevailing party for purposes of this section.

4.14 The mediator or arbitrator may in his/her sole discretion appoint an authorized health care professional to assist in the resolution of any medical issue, the cost to be paid by the insurance carrier, unless voluntarily paid by the employer.

4.15 The parties may submit a proposed settlement to the Trust at any time for assignment to an Arbitrator for expeditious issuance of an award and/or order. Any such settlement shall be in the form of a Compromise and Release Agreement or in the form of Stipulations with Request for Award. The settlement shall be filed on a pre-printed form approved by the Trust. The Trust may create a separate list of Arbitrators to handle settlements under separate contract(s), and change such list at the Trust's discretion.

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4.16 In order to better serve injured workers, it is agreed that the Trust may assign Ombudsmen, Mediators and Arbitrators to specific geographical areas.

### ARTICLE V

#### TRUST FUND

5.1 There shall be a Joint Board of Trustees for the Bay Area Union Roofing Contractors Workers' Compensation Trust Fund (identified above as the "Trust" and referred to in the alternative herein as the "Joint Board"). The Joint Board of Trustees of the Trust shall have one member from each Local representing the UNION and a corresponding number of members representing the ASSOCIATION. The Joint Board shall select from its membership, one representative each from the ASSOCIATION and the UNION, to serve as Chairman and Secretary, who shall retain voting privileges. The Joint Board shall meet at least twice per year and also when called by the Chairman.

5.2 The Joint Board shall supervise all matters involving implementation and conformity with the provisions of this Agreement and the Law and labor codes. The Joint Board shall have full power and authority to develop and implement any procedures the Joint Board deems necessary to carry out or effect the purpose and scope of this Agreement. In case of deadlock, the matter in dispute shall be referred to the American Arbitration Association for expedited adjudication. The arbitrator's decision shall be final and binding upon both parties hereto.

5.3 The Joint Board is hereby instructed and authorized to employ an administrator and an Ombudsman as soon as it is possible and practical. The Joint Board shall delegate to the administrator the responsibility and authority deemed necessary by the Joint Board.

#### EMPLOYER CONTRIBUTIONS

5.4 The parties recognize that adequate funding is essential in assuring the success of this Agreement. There is a need for the Trust to have insurance, including errors and omissions coverage. There is a need to pay an attorney to advise the Trust on legal matters. There is a need to pay the administrative expenses that flow from the duties of the administrator of the Trust. There is a need to pay the expenses that flow from the duties of the Ombudsman, mediators and arbitrators under this Agreement. In order to provide adequate funding for the administration of the alternative dispute resolution system of this Agreement, the employers signatory hereto agree to pay to the Trust a contribution of a percentage of their respective participating workers' compensation insurance payroll determined by the Joint Board of Trustees to be sufficient to cover the costs incurred in administering the alternative dispute resolution system. The employer agrees to supply such documentation of its participating payroll as to satisfy the parties. Failure to supply satisfactory documentation or to pay the specified contribution shall be grounds for the Joint Board to terminate this Agreement with the employer.

5.5 The Trust shall record such contributions on the books and records of the Trust Fund and shall record the expenses of this alternative dispute resolution system on the books and records of the Trust.

5.6 The administrator of the Trust shall advise the Joint Board quarterly of contributions received and expenditures made related to this alternative dispute resolution system. Should

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the administrator advise the Joint Board that the existing contributions are not sufficient to pay the costs of this alternative dispute resolution system, the Joint Board agrees to meet and determine the further contribution necessary to pay the expense of this alternative dispute resolution system. All employers subject to this Agreement are bound to pay the additional contribution levied by the Joint Board.

### **SUSPENSION OF ALTERNATIVE DISPUTE RESOLUTION SYSTEM**

5.7 In the event that the Joint Board fails to determine, levy and collect additional contributions necessary to pay the costs of this alternative dispute resolution system, this alternative dispute resolution system shall be suspended. During the periods of any such suspension, employees covered by this Article and the insurers of employers covered by this Article shall utilize the dispute resolution system set forth in the California Labor Code and the Rules and Regulations related thereto. However, any case involving an injury that occurred prior to any such suspension of the alternative dispute resolution system shall continue and be resolved subject to the terms of this agreement.

5.8 In no event shall the Trust Fund be liable for the expenses of employer, employee, or insurance carrier.

### **TRUST FUND RESERVES**

5.9 The Joint Board shall determine minimum and maximum levels of capital reserves for the Trust Fund. The initial funding of the Trust will be capped at three (3) months of estimated operating expenses, unless during the course of the year the Joint Board determines that there is a need for additional funding. Should the Trust Fund contributions collected exceed the maximum level of capital reserves determined by the Joint Board, the Joint Board shall develop a formula of suspending contributions and/or returning contributions to individual employers.

## **ARTICLE VI**

### **MISCELLANEOUS ISSUES**

6.1 The Trust may elect to consider a workers' compensation insurance plan that would provide for a risk sharing mechanism for some or all of the participating employers. All payments required to be made by the employer pursuant to this Agreement shall, in accordance with California law, be made by its workers' compensation insurance carrier. Similarly, all actions required by law to be undertaken by the insurance carrier rather than the employer shall be performed by the employer's workers' compensation insurance carrier.

6.2 The Joint Board shall have the authority to collect contributions and maintain cash deposits in bank interest bearing trust accounts. All interest earned will become part of the operating reserves of the Trust.

6.3 Upon termination of this Agreement the parties and the employers shall take whatever steps are necessary to insure that all obligations under this Agreement are fulfilled until all claims subject to this Agreement are resolved.

6.4 On projects where the owner, developer or general contractor supplies a "project specific", "owner controlled" "wrap-up" type of insurance program that includes worker

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compensation insurance, the employer at its option may suspend this Agreement for that specific project.

6.5 In the event of legal action contesting the legality of this Agreement, or any portion of it, the Trust shall pay the cost of defending the Agreement, and shall actively assist in such defense.

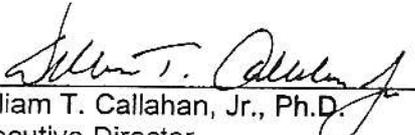
If any provision of this Agreement or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Agreement that can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are declared to be severable.

### ARTICLE VII

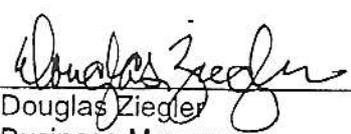
This Agreement shall remain in full force and effect from September 30, 2003 to and including the 31<sup>st</sup> day of July, 2006, and from year to year thereafter, unless the Agreement is terminated in accordance with the provisions of Section 2.4(a).

In witness and testimony of the provisions and terms mutually agreed upon and specified herein, the duly authorized representatives of the parties hereby affix their signatures as of the 1<sup>st</sup> day of September, 2003.

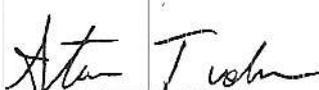
Associated Roofing Contractors  
Of the Bay Area Counties, Inc.

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

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

  
Douglas Ziegler  
Business Manager

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

  
Steve Tucker  
Business Manager

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

  
Dan Smith  
Business Manager

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**ATTACHMENT "A"**

**PARTICIPATING CALIFORNIA LOCALS OF THE UNITED UNION OF ROOFERS,  
WATERPROOFERS & ALLIED WORKERS, AFL-CIO TO THE BAY AREA UNION ROOFING  
CONTRACTORS ALTERNATIVE DISPUTE RESOLUTION AGREEMENT**

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

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

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

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**ATTACHMENT "B"**

**EXCLUSIVE LIST OF  
VOCATIONAL REHABILITATION PROVIDERS**

1. Those vocational rehabilitation providers that contract with the ULICO Insurance Group/Zurich American Insurance Company.
2. Those vocational rehabilitation providers that contract with the Everest National Insurance Company.
3. Those vocational rehabilitation providers that contract with the Republic Indemnity Company of America.
4. Those vocational rehabilitation providers that contract with the Zenith National Insurance Company.
5. Those vocational rehabilitation providers that contract with the California State Compensation Insurance Fund.
6. Those vocational rehabilitation providers that contract with Eagle Pacific Insurance Company.

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## ATTACHMENT "C"

### FEE SCHEDULES

- 1 Vocational Rehabilitation Fee Schedule:**  
All costs and charges for vocational rehabilitation services as defined in Section 4635 of the California Labor Code shall not exceed those authorized by Section 139.5 of the California Labor Code.
- 2. Medical Treatment Fee Schedule:**  
All medical treatment fees and costs shall not exceed those authorized by the State of California Official Medical Fee Schedule, or an amount agreed upon as between the authorized provider and the insurance company providing coverage, whichever is the lesser.
- 3. Medical-Legal Fee Schedule:**  
All costs and charges for medical-legal expenses as defined in Section 4620 of the California Labor Code shall not exceed those authorized by the State of California and set forth in the revised Fee Schedule for Medical-Legal Expenses as adopted by the Administrative Director, or an amount agreed upon as between the authorized provider and the insurance company providing coverage, whichever is the lesser.
- 4. Mediator and Arbitrator Fee & Expense Schedule:**  
All costs and charges for mediation and arbitration shall not exceed those provided for pursuant to contract between the Trust and the mediator, arbitrator or entity providing mediation and arbitration services.
- 5. Attorneys Fee Schedule:**  
The Arbitrator shall award the appropriate attorney fee. The attorney's fee shall be the reasonable fee as determined by the arbitrator, or an amount not greater than 12% of the permanent disability award, whichever is the lesser.

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## ATTACHMENT "D"

### AUTHORIZED PROVIDERS HEALTHCARE PROFESSIONALS AND FACILITIES LIST

Authorized Providers of Healthcare Professionals and Facilities for the Bay Area Union Roofing Contractors Workers' Compensation Insurance Trust shall initially include:

1. The physician that the employee has designated in writing as his or her personal physician, provided the employee has notified his or her employer in writing prior to the date of the industrial injury of the name, address and telephone number of such designated personal physician.
2. The authorized healthcare providers and facilities of the Bay Area Roofers Health and Welfare Trust.
3. Those healthcare providers and facilities of CIGNA Health Care
4. Those healthcare providers and facilities of ComPartners of California
5. Those healthcare providers and facilities of Blue Cross of California
6. Those healthcare providers and facilities of Blue Shield of California
7. Those healthcare providers and facilities of Facey Medical Group
8. Those healthcare providers and facilities of Health Net / Care America
9. Those healthcare providers and facilities of IntraCorp
10. Those healthcare providers and facilities of Kaiser Foundation Health Plan
11. Those healthcare providers and facilities of MedEx Health Care
12. Those healthcare providers and facilities of Sierra Health Group
13. Those physicians appointed by, and in good standing with, the Industrial Medical Council of the State of California (IMC), as qualified medical evaluators (QMEs)

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**ATTACHMENT "E"**

**AUTHORIZED PROVIDERS  
PRESCRIPTION MEDICINE PROVIDERS**

Authorized Providers of Prescription Medicine for the Bay Area Union Roofing Contractors Workers' Compensation Insurance Trust shall initially include the prescription medicine providers recognized by those healthcare providers authorized by the Trust, or as duly licensed to dispense prescription medication by the State of California.

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**ATTACHMENT "H"**

**MEMORANDUM OF UNDERSTANDING**

1. The undersigned Employer, who is signatory to a collective bargaining agreement other than a project labor agreement and who is either a Regular Member of Associated Roofing Contractors of the Bay Area Counties, Inc., or is eligible for and has applied for Regular Membership in the Association, agrees to be bound by and comply with all of the terms and conditions of the Alternative Dispute Resolution ("ADR") Agreement between Locals No. 40, 81 and 95 of the United Union of Roofers, Waterproofers and Allied Workers, AFL-CIO, and Associated Roofing Contractors of the Bay Area Counties, Inc., entered into effective the 1<sup>st</sup> day of September, 2003, both as they currently exist and as they may be changed from time to time, receipt of a copy of which is hereby acknowledged;
2. The undersigned Employer further agrees to be bound by and comply with all of the terms and conditions of the Bay Area Union Roofing Contractors Workers' Compensation Trust Fund Agreement and the Rules of the Bay Area Union Roofing Contractors Workers' Compensation Trust, both as they currently exist and as they may be changed from time to time, receipt of copies of which is hereby acknowledged;
3. This Memorandum of Understanding is effective \_\_\_\_\_, 20\_\_
4. The term hereof shall be from the effective date through July 31<sup>st</sup>, 2006, and from year to year thereafter, unless: (a) timely notice is given as set forth in Article 2.4(a) of the ADR Agreement; or (b) the undersigned Employer is not offered a policy of workers' compensation insurance issued pursuant to the ADR program; or (c) the undersigned employer ceases to be a signatory employer and therefore ceases to be eligible for participation in the alternative dispute resolution system.

FIRM: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY/STATE/ZIPCODE: \_\_\_\_\_

PHONE:(\_\_\_\_) \_\_\_\_\_ FAX:(\_\_\_\_) \_\_\_\_\_

PRINTED NAME OF SIGNING INDIVIDUAL: \_\_\_\_\_

TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

08/11/03

# BAY AREA ROOFING CONTRACTORS ADR AGREEMENT

## ATTACHMENT H

### MEMORANDUM OF UNDERSTANDING AND FUNDING AGREEMENT

1. The undersigned Employer, who is a signatory to a collective bargaining agreement other than a project labor agreement and who either (a) is a Regular Member of Associated Roofing Contractors of the Bay Area Counties, Inc., or (b) is eligible for and has applied for Regular Membership in the Association, hereby agrees to be bound by and comply with all of the terms and conditions of the Alternative Dispute Resolution ("ADR") Agreement between Locals No. 27, 40, 81 and 95 of the United Union of Roofers, Waterproofers and Allied Workers, AFL-CIO, and Associated Roofing Contractors of the Bay Area Counties, Inc., entered into effective the 1<sup>st</sup> day of September, 2003, both as they currently exist and as they may be changed from time to time, receipt of a copy of which is hereby acknowledged;
2. The undersigned Employer further agrees to be bound by and comply with all of the terms and conditions of the Bay Area Union Roofing Contractors Workers' Compensation Trust Fund Agreement and the Rules of the Bay Area Union Roofing Contractors Workers' Compensation Trust, both as they currently exist and as they may be changed from time to time, receipt of copies of which is hereby acknowledged;
3. The Bay Area Union Roofing Contractors Workers' Compensation Trust Fund ("Trust") has been organized to supervise all matters involving implementation of the provisions of the ADR Agreement. Adequate funding of the Trust is essential to assuring the success of the ADR Agreement. Therefore the undersigned Employer specifically agrees as follows:
  - (a) The Employer agrees to pay an annual fee to the Trust based on the policy year of the workers compensation policy issued to it. This fee will be fully earned by the Trust on signing this agreement, and will be payable as follows:
    - (i) If the underlying policy is in effect for its entire 12 month term, the Employer agrees to pay \_\_\_\_\_% of its estimated annual premium with each installment payment made to the insurance company, and the same percentage of any amount shown due upon final audit by the insurance carrier, payable at the same time the additional premium is due. If the audit shows that the Employer is entitled to a refund, the Employer shall also be entitled to a proportionate refund from the Trust.

(ii) If the underlying policy is terminated for any reason before its entire 12 month term, whether by the Employer, the insurance company, or for any other reason (including all reasons set forth in paragraph 5 hereof), the Employer shall pay to the Trust the difference between \_\_\_\_\_% of its estimated annual premium and the amount already paid to the Trust for the premium year. That amount shall be due on the termination date of the policy. No adjustments will be made as a result of the insurance company's final audit.

(b) If at any time workers compensation insurance is no longer available under the ADR program, but there are claims that remain to be adjusted under that program, to the extent Trust reserves are not available to pay for the administration of those claims, the Trust may assess a termination fee to the Employer, and all other similarly situated employers, if it withdrew from the Trust during the 12 month period prior to the date workers compensation insurance no longer was available under the ADR program.

4. This Memorandum of Understanding and Funding Agreement is effective \_\_\_\_\_, 20\_\_\_\_\_.

5. The term hereof shall be from the effective date through July 31<sup>st</sup>, 2006, and from year to year thereafter, unless: (a) timely notice is given by the Union or Association as set forth in Article 2.4(a) of the ADR Agreement and the ADR Agreement is in fact terminated pursuant to that notice; or (b) the Employer withdraws from the ADR Agreement pursuant to Article 2.4(b) of the ADR Agreement; or (c) the undersigned Employer is not offered a policy of workers' compensation insurance issued pursuant to the ADR program or an issued policy is cancelled by the insurance company; or (d) the undersigned employer ceases to be a signatory employer and therefore ceases to be eligible for participation in the alternative dispute resolution system.

FIRM: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY/STATE/ZIP CODE: \_\_\_\_\_

PHONE: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_

PRINTED NAME OF SIGNING INDIVIDUAL: \_\_\_\_\_

TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

**Alternative Dispute Resolution ("ADR") Agreement  
Between Locals 40, 81 and 95 of the  
United Union of Roofers, Waterproofers and Allied Workers, AFL-CIO  
and Associated Roofing Contractors  
of the Bay Area Counties, Inc.**

**Amendment #2**

1. Effective \_\_\_\_\_, 2004, Article 5.4 is amended to read:

"5.4 The parties recognize that adequate funding is essential in assuring the success of this Agreement. There is a need for the Trust to have insurance, including errors and omissions coverage. There is a need to pay an attorney to advise the Trust on legal matters. There is a need to pay the administrative expenses that flow from the duties of the administrator of the Trust. There is a need to pay the expenses that flow from the duties of the Ombudsman, mediators and arbitrators under this Agreement. These obligations will continue beyond the termination by any individual employer. In order to provide adequate funding for the administration of the alternative dispute resolution system of this Agreement, the employers signatory hereto agree to pay to the Trust a contribution determined in accordance with the following procedures:

- (a) An annual fee to the Trust by each Employer based on the policy year of the workers compensation policy issued to the Employer. This fee will be fully earned by the Trust on signing the Employer's Funding Agreement, and will be payable as follows:
  - (i) If the underlying policy is in effect for its entire 12 month term, the Employer will pay a percentage of its estimated annual premium as determined annually by the Trust with each installment payment made to the insurance company, and the same percentage of any amount shown due upon final audit by the insurance carrier, payable at the same time the additional premium is due. If the audit shows that the Employer is entitled to a refund, the Employer shall also be entitled to a proportionate refund from the Trust.
  - (ii) If the underlying policy is terminated for any reason before its entire 12 month term, whether by an Employer, the insurance company, or for any other reason, the Employer shall pay to the Trust the difference between the percentage of its estimated annual premium and the amount already paid to the Trust for the premium

year. That amount shall be due on the termination date of the policy. No adjustments will be made as a result of the insurance company's final audit.

- (b) If at any time workers compensation insurance is no longer available under this ADR program, but there are claims that remain to be adjusted under this program, to the extent Trust reserves are not available to pay for the administration of those claims, the Trust may assess a termination fee on all employers who withdrew from the Trust during the 12 month period prior to the date workers compensation insurance no longer was available under the ADR program.

All employers agree to supply such documentation of their participating payroll and workers compensation insurance premiums as to satisfy the parties. Failure to supply satisfactory documentation or to pay the specified contribution shall be grounds for the Joint Board to terminate this Agreement with respect to the employer."

2. Effective \_\_\_\_\_, 2004, Attachment H is amended as set forth in the attachment hereto.

In witness and testimony of the provisions and terms mutually agreed upon and specified herein, the duly authorized representatives of the parties hereby affix their signatures as of the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

**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., PhD.  
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  
of Roofers, Waterproofers and Allied  
Workers, AFL-CIO**

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

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

## BAY AREA ROOFING CONTRACTORS ADR AGREEMENT

### ATTACHMENT H

#### MEMORANDUM OF UNDERSTANDING AND FUNDING AGREEMENT

1. The undersigned Employer, who is a signatory to a collective bargaining agreement other than a project labor agreement and who either (a) is a Regular Member of Associated Roofing Contractors of the Bay Area Counties, Inc., or (b) is eligible for and has applied for Regular Membership in the Association, hereby agrees to be bound by and comply with all of the terms and conditions of the Alternative Dispute Resolution ("ADR") Agreement between Locals No. 40, 81 and 95 of the United Union of Roofers, Waterproofers and Allied Workers, AFL-CIO, and Associated Roofing Contractors of the Bay Area Counties, Inc., entered into effective the 1<sup>st</sup> day of September, 2003, both as they currently exist and as they may be changed from time to time, receipt of a copy of which is hereby acknowledged;
2. The undersigned Employer further agrees to be bound by and comply with all of the terms and conditions of the Bay Area Union Roofing Contractors Workers' Compensation Trust Fund Agreement and the Rules of the Bay Area Union Roofing Contractors Workers' Compensation Trust, both as they currently exist and as they may be changed from time to time, receipt of copies of which is hereby acknowledged;
3. The Bay Area Union Roofing Contractors Workers' Compensation Trust Fund ("Trust") has been organized to supervise all matters involving implementation of the provisions of the ADR Agreement. Adequate funding of the Trust is essential to assuring the success of the ADR Agreement. Therefore the undersigned Employer specifically agrees as follows:
  - (a) The Employer agrees to pay an annual fee to the Trust based on the policy year of the workers compensation policy issued to it. This fee will be fully earned by the Trust on signing this agreement, and will be payable as follows:
    - (i) If the underlying policy is in effect for its entire 12 month term, the Employer agrees to pay \_\_\_\_\_% of its estimated annual premium with each installment payment made to the insurance company, and the same percentage of any amount shown due upon final audit by the insurance carrier, payable at the same time the additional premium is due. If the audit shows that the Employer is entitled to a refund, the Employer shall also be entitled to a proportionate refund from the Trust.

(ii) If the underlying policy is terminated for any reason before its entire 12 month term, whether by the Employer, the insurance company, or for any other reason (including all reasons set forth in paragraph 5 hereof), the Employer shall pay to the Trust the difference between \_\_\_\_\_% of its estimated annual premium and the amount already paid to the Trust for the premium year. That amount shall be due on the termination date of the policy. No adjustments will be made as a result of the insurance company's final audit.

(b) If at any time workers compensation insurance is no longer available under the ADR program, but there are claims that remain to be adjusted under that program, to the extent Trust reserves are not available to pay for the administration of those claims, the Trust may assess a termination fee to the Employer, and all other similarly situated employers, if it withdrew from the Trust during the 12 month period prior to the date workers compensation insurance no longer was available under the ADR program.

4. This Memorandum of Understanding and Funding Agreement is effective \_\_\_\_\_, 20\_\_\_\_.

5. The term hereof shall be from the effective date through July 31<sup>st</sup>, 2006, and from year to year thereafter, unless: (a) timely notice is given by the Union or Association as set forth in Article 2.4(a) of the ADR Agreement and the ADR Agreement is in fact terminated pursuant to that notice; or (b) the Employer withdraws from the ADR Agreement pursuant to Article 2.4(b) of the ADR Agreement; or (c) the undersigned Employer is not offered a policy of workers' compensation insurance issued pursuant to the ADR program or an issued policy is cancelled by the insurance company; or (d) the undersigned employer ceases to be a signatory employer and therefore ceases to be eligible for participation in the alternative dispute resolution system.

FIRM: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY/STATE/ZIP CODE: \_\_\_\_\_

PHONE: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_

PRINTED NAME OF SIGNING INDIVIDUAL: \_\_\_\_\_

TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

**Alternative Dispute Resolution ("ADR") Agreement  
Between Locáls 27, 40, 81 and 95 of the  
United Union of Roofers, Waterproofers and Allied Workers, AFL-CIO  
and Associated Roofing Contractors  
of the Bay Area Counties, Inc.**

**Amendment #3**

1. Effective September 9, 2004, Article 5.4 is amended to read:

"5.4 The parties recognize that adequate funding is essential in assuring the success of this Agreement. There is a need for the Trust to have insurance, including errors and omissions coverage. There is a need to pay an attorney to advise the Trust on legal matters. There is a need to pay the administrative expenses that flow from the duties of the administrator of the Trust. There is a need to pay the expenses that flow from the duties of the Ombudsman, mediators and arbitrators under this Agreement. These obligations will continue beyond the termination by any individual employer. In order to provide adequate funding for the administration of the alternative dispute resolution system of this Agreement, the employers signatory hereto agree to pay to the Trust a contribution determined in accordance with the following procedures:

- (a) An annual fee to the Trust by each Employer based on the policy year of the workers compensation policy issued to the Employer. This fee will be fully earned by the Trust on signing the Employer's Funding Agreement, and will be payable as follows:
  - (i) If the underlying policy is in effect for its entire 12 month term, the Employer will pay a percentage of its estimated annual premium as determined annually by the Trust with each installment payment made to the insurance company, and the same percentage of any amount shown due upon final audit by the insurance carrier, payable at the same time the additional premium is due. If the audit shows that the Employer is entitled to a refund, the Employer shall also be entitled to a proportionate refund from the Trust.
  - (ii) If the underlying policy is terminated for any reason before its entire 12 month term, whether by an Employer, the insurance company, or for any other reason, the Employer shall pay to the Trust the difference between the percentage of its estimated annual premium and the amount already paid to the Trust for the premium year. That amount shall be due on the termination date of the policy. No adjustments will be made as a result of the insurance company's final audit.

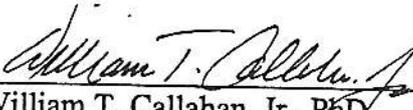
- (b) If at any time workers compensation insurance is no longer available under this ADR program, but there are claims that remain to be adjusted under this program, to the extent Trust reserves are not available to pay for the administration of those claims, the Trust may assess a termination fee on all employers who withdrew from the Trust during the 12 month period prior to the date workers compensation insurance no longer was available under the ADR program.

All employers agree to supply such documentation of their participating payroll and workers compensation insurance premiums as to satisfy the parties. Failure to supply satisfactory documentation or to pay the specified contribution shall be grounds for the Joint Board to terminate this Agreement with respect to the employer."

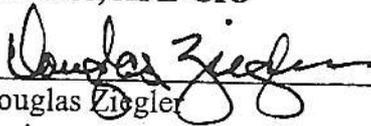
2. Effective September 9, 2004, Attachment H is amended as set forth in the attachment hereto.

In witness and testimony of the provisions and terms mutually agreed upon and specified herein, the duly authorized representatives of the parties hereby affix their signatures as of the 9<sup>th</sup> day of September, 2004.

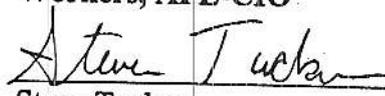
**Associated Roofing Contractors of  
the Bay Area Counties, Inc.**

  
\_\_\_\_\_  
William T. Callahan, Jr., PhD.  
Executive Director

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

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

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

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

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

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

**Local Union No. 27, United Union of  
Roofers, Waterproofers and Allied  
Workers, AFL-CIO**

  
\_\_\_\_\_  
Terry Smith  
Business Manager