

**Northern California
Drywall Finishers Master Agreement**

Between

District Council 16

&

**Northern California
Drywall Contractors Association**

August 1, 2003 – July 31, 2008

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ARTICLE 1

This Agreement is made and entered into the first day of August 2003 by and between DISTRICT COUNCIL 16 of the International Union of Painters and Allied Trades AFL-CIO, hereinafter referred to as the Union, acting as the exclusive collective bargaining representative of employee members of said Union or who hereafter become members thereof and the NORTHERN CALIFORNIA DRYWALL CONTRACTORS ASSOCIATION, acting as the exclusive bargaining representative of Employer Members of said association or who hereafter become members thereof and other Associations of Employers and individual employers who are signatory to this Agreement or any copy thereof and are regularly engaged in the Drywall Taping and Finishing business all hereinafter referred to as the EMPLOYER.

The Employer and each individual employer expressly acknowledge that they and each of them have satisfied themselves that the Union and/or each of its constituent bodies represents a majority of employees employed to perform bargaining unit work and agrees that the Union and/or each of its constituents is the collective bargaining representative of such employees. The Employer on behalf of itself and each of its members and each individual Employer, specifically agrees that it and they are establishing, or have established a collective bargaining relationship by this Agreement within the meaning of Section 9(a) of the National Labor Relations Act of 1947 as amended.

The jurisdiction of this Agreement covers the following Counties: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Mariposa, Marin, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo and Yuba.

The Northern California Drywall Contractors Association will include in their By-laws a paragraph binding all Members of any category covered under the Scope of Work described in this Agreement to the terms and conditions of this Agreement. These By-laws and any amendments shall be filed with the Union.

ARTICLE 2

SCOPE OF WORK

1. The Scope of Work covered by this Agreement shall include but not be limited to all work operations after the initial unloading of the Drywall Finishers material on the job site, including distributions to the point of application.
2. Work or service pertaining to the preparation, spotting, painting, detailing, taping, flushing, sanding and finishing of interior and/or exterior gypsum, drywall, thinwall, concrete, sheet, wood or plaster surfaces. Skimming/priming or sealing as pertaining to achieving a level 5 finish.

3. Work or services pertaining to the application or type of surface on which materials are applied, including but not limited to texture and simulated acoustic material of all types and the application of radiant heat fill and steel fire proofing materials.
4. Work or services pertaining to the installation of protective coverings and masking prior to the application of finish materials.
5. Caulking between sheetrock walls and/or ceilings and adjoining walls, ceilings and floors of other materials.
6. The operation and care of all taping tools and texturing equipment used in the finishing and texturing of drywall and other surfaces including brushes, rollers, spray texturing equipment, miscellaneous hand, mechanical and power tools, and the operation and maintenance of compressors required in the finishing and texturing of such surfaces.
7. No limitations shall be placed on the work covered by this Agreement by reasons of the surface type of material, or purpose for which the material used is designed or intended.
8. Nothing herein is intended to conflict with or violate any State or Federal law.
9. The clean-up of all material and debris occasioned by any job operation at the site of construction, alteration, or repair undertaken by the Employer signatory hereto, whether such operation occurs on the interior or exterior of a building structure.
10. Employers who are signatory parties to this Agreement, who do work that is not covered by this Agreement but is covered by the Scope of Work Clause in the respective Painters Agreement of District Council 16, shall be covered by the Scope of Work Clause in the respective Painter's Agreements.

ARTICLE 3

PRESERVATION OF WORK CLAUSE

Section 1. To protect and preserve, for the employees covered by this Agreement, all work they have performed and all work covered by this agreement, and to prevent any device or subterfuge to avoid the protection and preservation of such work, it is agreed as follows: If the Employer performs on-site construction work of the type covered by this agreement, under its own name or the name of another, as a corporation, company, partnership, or other business entity, including a joint venture, wherein the Employer, through its officers, directors, partners, owners, or stockholders, exercises directly or indirectly (through family members or otherwise), management, control, or majority ownership, the terms and conditions of this agreement shall be applicable to all such work.

Section 2. All charges of violations of Section 1 of this Article shall be considered as a dispute and shall be processed in accordance with the provisions of this agreement on the handling of grievances and the final and binding resolution of disputes. As a remedy for violations of this

Article, the Joint Adjustment Board or Arbitrator shall be able, at the request of the Union, to require an Employer to pay 1) to affected employees covered by this agreement, including registered applicants for employment, the equivalent of wages those employees have lost because of the violations, and 2) into the affected Joint Trust Funds to which this agreement requires contributions any delinquent contributions that resulted from the violations. The Joint Adjustment Board or Arbitrator shall be able also to provide any other appropriate remedies, whether provided by law or this agreement. The Union shall enforce a decision of the Joint Adjustment Board or Arbitrator under this Article only through arbitral, judicial, or governmental, for example, the National Labor Relations Board channels.

Section 3. If, after an Employer has violated this Article, the Union and/or the Trustees of one or more Joint Trust Funds to which this agreement requires contributions institute legal action to enforce an award by an Arbitrator or the Joint Adjustment Board remedying such violation, or defend an action that seeks to vacate such award, the Employer shall pay any accountants' and/or attorneys' fees incurred by Union and/or the Joint Trust Funds, plus costs of the litigation, that have resulted from such legal action. This Section does not affect other remedies, whether provided by law or this Article, that may be available to the Union and/or the Joint Trust Funds.

ARTICLE 4

RESPONSIBILITY BOND REQUIRED BY THIS AGREEMENT

Section 1. Each contractor signatory to said Agreement shall post with the Trust Funds Administrator a Surety Bond, cash or other security acceptable to the Trust Fund Trustees, in the amount of Ten Thousand Dollars (\$10,000.00) for 0 – 10 employees, Thirty Thousand Dollars (\$30,000.00) for 11 – 30 employees and Sixty Thousand Dollars (\$60,000) for 31 employees and up, to guarantee any deficiency of such employer in the payment of wages, health and welfare and other fringe benefits or monetary obligations that are duly imposed under the provisions of this Agreement. The number of employees per employer shall be based on the average number of employees reported to the Trust Funds during the preceding three (3) month period.

Section 2. Each employee, Trust Fund or other person or entity having a claim against any contractor under the provisions of this Agreement shall notify the Trust Fund Trustees in writing, of the facts and circumstances of such unpaid obligations. The Trust Fund Trustees shall, after verification of the indebtedness, process a certification of the default to the Surety Company for payment under the terms of the Surety Bond and remit the funds received from the Surety Company to the person, Fund or entity entitled thereto.

Section 3. In the event the contractor has deposited cash or other security under this provision, the Trust Funds Trustees upon verification of an indebtedness, under the terms of the Agreement, shall withdraw from said cash deposit, or convert said security to cash, and forward to the person, or entity entitled thereto, funds sufficient to discharge such obligations.

Section 4. Within twenty-four (24) hours after the notice to any Employer of such payment by the Trust Funds Administrator, out of that Employer's cash or security deposit, the Employer shall replenish his/hers cash or other security deposit to the original sum or to such further sum

as the Trust Fund Trustees shall determine as necessary to guarantee future deficiencies of such Employer.

Section 5. Should the Trust Fund Trustees determine that the liability of any Employer under this Agreement is greater than the sum required under Section 1 above, they may immediately demand and cause the Employer to increase his cash deposit or Surety Bond to an amount sufficient to cover such liability.

Section 6. In the event that any Contractor has a Surety Bond canceled during the term of this Agreement the Trust Funds Trustees reserves the right to require other bonding in cash or through some other means acceptable to the Trust Funds Trustees.

ARTICLE 5 **JOB REGISTRATION**

The Employer shall register all drywall taping jobs to the central office of District Council 16 on forms provided.

ARTICLE 6 **EMPLOYERS**

Section 1. Employers signatory to this Agreement shall possess a California State License Classification C-9, C-33, or C-61.

The Employer shall not do business covered under the scope of work herein under any other name than that name in which he/she holds a California State License.

Section 2. Drywall Contractors who do painting will be covered under the terms of the District Council Painters agreement where the work is being performed. It is understood that the Council will continue their organizing efforts including production and maintenance, and agreements will be signed with Employers in said fields, establishing terms and conditions for production and maintenance taping.

Employers signatory hereto doing production and maintenance taping will be requested to execute agreements relating to said work, and any work done will be covered by the terms of such executed agreements (if none, by this Agreement).

Section 3. The Employer shall permit duly accredited representatives of the District Council to visit his shop or job at any time where work is being performed in order to determine whether the shop or job is being conducted in accordance with this Agreement.

Section 4. The Employer shall have a duly issued and effective State Contractor's License, shall carry Workers Compensation Insurance, and shall comply with all Federal, State and Municipal Laws pertaining to the Drywall Industry and all health and safety regulations and rules of the

State and Municipal Departments, Commission and Health Officers including the rules and regulations of the Industrial Accident Commission.

Section 5. The Employer shall become a party to this Collective Bargaining Agreement by joining an Employer Association and/or chapter (which is signatory hereto and which has jurisdiction over the territory in which he operates) or by becoming a Non-Member Signatory. A person who signs this Agreement individually and who is not a member of any association and/or chapter shall be designated as a NON-MEMBER SIGNATORY.

Section 6. The Employer warrants, asserts, and agrees that this document is executed by him/her with full authority to represent and bind any firm, partnership, corporation or association of which he/she is a partner, officer, representative or member.

Section 7. If this Agreement is signed by a member of a partnership, it shall apply to them and each of them individually. In the event of a dissolution or termination of said partnership or in the event of a merger, consolidation or other legal change whatsoever, with respect to employer, any obligations hereunder shall be binding upon any assignee, successor, legal representatives or lessee of such Employer.

Section 8. After this Agreement takes effect any Employer may become a party hereto if a counterpart of the Agreement is executed by him/her. This Agreement shall take effect as to such new contracting party at such time as said party signs such counterpart.

Section 9. This Agreement may be executed in multiple counterparts and when one counterpart is signed by the Association or Chapter, all such counterparts shall constitute when taken together, one and the same instrument as if all signatories were contained in the original.

Section 10. No contractor shall work with the tools on any job of drywall finishing or any other type of work covered by this Agreement unless he/she shall have in his/her employ at least one Journeyman. With respect to any such job requiring overtime work, no contractor shall work with the tools unless a Journeyman shall actually work with him/her on such work.

Section 11. Any contractor signatory to this Agreement who subcontracts bargaining unit work to another contractor signatory to this Agreement shall be held primarily responsible for delinquent payment of wages and/or fringe benefits.

All jobs must be registered by the prime contractor listing the subcontractor. The job must also be registered by the subcontractor.

An Employer shall not subcontract the labor part of a contract to an Employee or Journeyman.

Section 12. Employees covered by this agreement shall have the right to respect any legal primary picket line validly established by any bona fide labor organization, and the Union party to this agreement has the right to withdraw employees covered by this agreement whenever the employer party to the agreement is involved in a legitimate primary labor dispute with any bona fide labor organization. It shall not be a violation of this Agreement, and it shall not be cause for

discharge or disciplinary action, in the event an employee refuses to enter upon any property involved in a lawful primary labor dispute, or refuses to go through or work behind any lawful primary picket line of the Union party to this Agreement, and including lawful primary picket lines at the Employer's own place of business or jobs. Furthermore, recognizing the "Special problems" in the Construction Industry based upon the close relationship between contractors and subcontractors at the job site of the construction, alteration, painting, or repair of a building, structure, or other such work and the friction that is created when Union and non-union employees are required to work side-by-side, it shall not be a violation of this Agreement and it shall not be a cause for disciplinary action or discharge in the event an employee refuses to enter upon any such construction site where non-union employees are employed and which would require the employee to work "shoulder-to-shoulder" or along side the non-union employee or employees, or refuses to remain on such a job site when non-union employees are engaged in such construction on the job site. This clause shall apply only to job sites where the Union's members are working, whether it be on a construction site of the Employer or at any other job site.

An Employer signatory to this Agreement may not hire as an employee anyone who is signatory to this Agreement.

Section 13. It shall be a violation of this Agreement for the Employer or the Employer's agent to establish production quotas or piece work systems or require or permit Journeypersons or apprentices to submit production reports in any form.

Section 14. The Employer shall not subcontract any work covered by this Agreement to be done at the site of construction, alteration, or repair of a building, structure or other work:

1. To any other Individual Employer who works with the tools of the trade involved;
- or
2. To any individual or firm who is not a party to this Collective Bargaining Agreement.

Section 15. The Employer party hereto shall, when engaged in work outside the geographic jurisdiction of the Union party to the agreement, comply with all of the lawful clauses of the collective bargaining agreement in effect in said other geographic jurisdiction and executed by the employers of the industry and the affiliated Local Unions in that jurisdiction, including but not limited to, the wages, hours, working conditions, fringe benefits, and procedure for settlement of grievances set forth therein; provided however, that as to employees employed by such employer from within the geographic jurisdiction of the Union party to this agreement and who are brought into an outside jurisdiction, such employee shall be entitled to receive the wages and conditions effective in either the home or outside jurisdiction whichever are more favorable to such employees, and fringe benefit contributions on behalf of such employees shall be made solely to their home funds in accordance with their governing documents. This provision is enforceable by the District Council or Local Union in whose jurisdiction the work is being performed, both through the procedure for settlement of grievances set forth in its applicable

collective bargaining agreement and through the courts, and is also enforceable by the Union party to this agreement, both through the procedure for settlement of grievances set forth in this agreement and through the courts.

ARTICLE 7

EMPLOYEES AND HIRING PRACTICES

Section 1. There shall be no discrimination in hiring and/or promotion and/or any other aspects of employment because of race, creed, sex, national origin or age.

Whenever an Employer, signatory to this Agreement requires workers, he/she shall notify the office of the Local Union in the area where the work is being performed, either in writing or by telephone, stating the number of workers required, the type of work to be performed, the starting date of the job, and its approximate duration. Nothing herein contained shall guarantee that any such job shall be of any duration or that any worker shall be employed for any specific period of time.

The contractor or the employer party to this agreement, when engaged in work outside the geographical jurisdiction of the Union party to this agreement, shall employ not less than fifty percent (50%) of the workers employed on such work from the residents of the area where the work is performed or from among persons who are employed the greater percentage of their time in such area.

Section 2. Upon receipt of such notice, the Union shall use its best efforts to furnish the required number of qualified and competent workers. Selection of applicants for referral to jobs shall be on a nondiscriminatory basis. Selection will be on the following basis:

The Local Union shall maintain a list of all workmen seeking jobs who have been employed on the type of work and area jurisdiction of this Agreement.

Worker's names shall be entered on said list in the order in which they come to the Union's office seeking employment.

In dispatching workers, preference shall be given to workers on the lists. Within each list, preferences shall be given to those whose designations correspond to the type of work involved, in the order in which their names appear on the list.

For each worker dispatched, the Union shall send to the Employer, with the worker, by mail or by fax, a written referral slip.

Whenever an Employer requests a particular worker by name, the Union will furnish said workman to such Employer, if available, provided that such worker is registered on the list.

Section 3. Substance Abuse Policy. The parties recognize the problems that substance abuse can create. Accordingly, the parties have established a substance abuse program to deal with problems from both a safety and productivity point of view, as well as recognizing the individual rights and well-being of each employee. Any program implemented must be in compliance with all applicable City, County, State and Federal Laws.

Appendix A, Applicant Substance Abuse and Testing Policy has been reviewed and accepted by the bargaining parties to this Agreement:

Appendix A may be adapted/modified to meet the more stringent requirements of Owners/Developers/General Contractors and Government Agencies.

Section 4. No worker shall be employed without first obtaining a referral slip from the Local Union in the area where the work is being performed. The referral slip provided for in the section shall be applicable to any such particular worker requested by name or dispatch.

Section 5. If the Union is unable to furnish qualified workers within forty-eight (48) hours after an Employer calls for them, the Employer shall be free to procure workers from any other source or sources. He/she shall, in such event, notify the Union within twenty four (24) hours of the names and addresses of workers so hired.

Section 6. The provisions of Sections 1 through 6 shall be posted by employers and by the Union in all places where notices to employees and applicants for employment are customarily posted, including the bulletin board of the Union.

SEVEN DAY CLAUSE

Section 7. Workers employed by the Employers for a period of thirty (30) working days continuously or accumulatively within the unit covered by this Agreement, and any workers working for any one (1) Employer on or after the thirtieth (30) day following the date of his employment or the effective date of this Agreement, whichever is later, shall as a condition of employment become members of the Union by tendering full and uniform fees in effect, and all workers accepted into membership shall thereafter maintain their continuous good standing in the Union as a condition of employment by paying regular dues. In the event that a worker fails to tender the required fees or dues in accordance with this Section, the Union shall notify the Employer in writing and the Employer shall discharge the worker within forty-eight (48) hours (Saturday, Sunday and holidays excepted). Notwithstanding anything to the contrary in this Article it is agreed that the thirty (30) day period referred to in this Section shall be reduced to seven (7) days for all employees of an Employer engaged primarily in the building and construction industry, so that such employees will be required as a condition of employment to become members of the Union after the seventh (7th) day following the beginning of such employment or the effective date of this Agreement whichever is later, and all such employees accepted into membership shall thereafter maintain their continuous good standing in the Union as a condition of employment.

Section 8. No person who holds a C-33, C-61 or C-9 license pertaining to the drywall industry, shall be eligible to qualify as, or shall be considered to be, a worker for placement on any list for hiring as provided in this Article, inasmuch as no person may concurrently and simultaneously qualify both as an employer and worker.

Section 9. Any employee who is discharged due to his/her activity in reporting violations of this Agreement, shall report the same to the District Council and if after investigation, said charges are substantiated either by agreement or through the Grievance and Arbitration process, the employee shall be returned to employment and receive retroactive pay from the date of dismissal.

Section 10. It shall not be a violation of this Agreement for employees to refuse to pass through or work behind a legitimate picket line recognized by the Building and Construction Trades Council in the area where the work is being performed.

Section 11. No employee shall work for any signatory employer who has failed, neglected or refused to pay his/her employees the wages including Trust Fund Benefits or other compensation provided for in this Agreement. The District Council or Local Union may take such economic action, by strike, picket line or boycott, as it may see fit, against any employer so failing, neglecting or refusing to pay his/her employees the wages or other compensation provided for in this Agreement.

Section 12. No employee may be transferred from an individual Employer's payroll to another individual Employer's payroll except in accordance with this Article 6.

Section 13. Whenever the Employer requests a worker who is not a member of the Union, he/she shall do so in writing on a form provided by the Union. It shall be the obligation of the Employer to see that the provisions of this Article 6 are carried out by the Employee. Upon failure to comply, the Employer shall become liable to the Union for fees and dues lost to the Union. Payments by the Employer for fees and dues lost will be paid to the Local Union where the violation occurred.

Whenever a worker, who is not a Union member, is employed without a referral slip from the Union, the Employer shall become liable for the full fees to the Union.

ARTICLE 8

TAPER APPRENTICES

Section 1. It shall be the duty of the Bay Area Drywall Joint Apprenticeship Committee to work out rules and regulations for the control of the apprentices in the drywall industry and decide all complaints having to do with apprenticeship. The members of the Bay Area Drywall Joint Apprenticeship Committee shall set up a program for the handling of an Apprentice System. Members of the Committee shall be selected by the groups they represent.

Section 2. In case of any dissatisfaction between a contractor and an apprentice regarding any decision of the Bay Area Drywall Joint Apprenticeship Committee it shall be the duty of the parties involved to appeal the matter to the Division of Apprenticeship Standards, State of California. Said Apprenticeship Committee shall be empowered to exercise disciplinary action when apprentices or contractors refuse to comply with said rules and regulations.

Section 3. First year apprentices shall be steadily employed unless circumstances prevail which are beyond the control of the Employer.

Section 4. No Employer shall be permitted to employ more than one (1) Apprentice to each three (3) Journeyperson tapers or fraction thereof.

Employers with three (3) or more employees must employ one (1) Apprentice Taper and one (1) Apprentice Taper per each three (3) additional Journeypersons thereafter.

Section 5. The term Apprenticeship Training shall be in accordance with Standards approved by the California Division of Apprenticeship Standards. The parties to this Agreement shall bind the Bay Area Drywall Joint Apprenticeship Committee and sub-committees to the strict enforcement of this Section.

A Drywall Contractor may employ Drywall Taping Apprentices provided that:

- (a) Drywall Taping Apprentices shall be not less than eighteen (18) years of age
- (b) He/she shall first register such Apprentice with a Local Union
- (c) He/she shall sign a prescribed form with the Northern California Drywall Joint Apprenticeship Committee
- (d) He/she shall employ the Apprentice for a training period of thirty six (36) consecutive months, unless circumstances prevail that are beyond the control of the Employer.

Apprentices must be rotated on all phases of taping operations. Under no circumstance shall Apprentices be used exclusively for nail spotting, sanding or texturing. The Northern California Joint Apprenticeship Committees shall implement the "Blue Book" system for documenting Apprentice on the job training.

A Drywall Taping Apprentice shall be paid an hourly wage based on percentages of the Journeyperson Taper's minimum wage, plus Fringe Benefits as noted below.

An apprenticeship period of thirty six (36) months is hereby established. The wage scale is as follows:

- 45% - First six (6) months, plus Health & Welfare, Dues Check Off, Industry Fund and Apprentice Funds
 - 55% - Second six (6) months, plus full fringe benefits
 - 60% - Third six (6) months, plus full fringe benefits
 - 70% - Fourth six (6) months, plus full fringe benefits
 - 80% - Fifth six (6) months, plus full fringe benefits
 - 90% - Sixth six (6) months, plus full fringe benefits
- Thereafter, he shall receive Journeyman Taper's rate of pay.

During the first nine (9) months of training, the Apprentice shall have supervision. The Employer shall furnish one (1) set of tools, one (1) time only, to beginning Apprentices. This set shall consist of two (2) buckets, one (1) pan, one (1) beater, one (1) sanding pole, one (1) 6" drywall knife, one (1) 8" drywall knife and one (1) 12" knife.

Section 6. No Apprentice shall be allowed to drop his Apprenticeship Card and take out or apply to a Signatory Local Union for a Journeyman Card unless permission has been granted by the Bay Area Joint Apprenticeship Committee.

Section 7. New Applicant Classification: New applicant to start at seventy percent (70%) of Journeyman's rate of pay plus full fringe benefits. Increases of ten percent (10%) each year – one hundred percent (100%) in three (3) years. New Applicants can not replace Journeyman. In no case will New Applicant work on prevailing wage work.

Section 8. No Apprentice shall be sent to out-of-area work that will interfere or prohibit him from attending school classes or appearing before the Apprenticeship Committee after due notice has been given.

Section 9. Tapers who have worked non-union jobs may be placed in the Apprenticeship Program at any period of Apprenticeship upon mutual agreement between the union, employer and employee.

Section 10. The parties agree that the Bay Area Drywall Joint Apprenticeship Committee shall have the authority to expend Drywall Apprenticeship monies for special Drywall Apprenticeship projects.

ARTICLE 9

WAGES AND PAYMENT OF SAME

Section 1. The rate of pay for Journeyperson Tapers working under this Agreement shall be as per Schedule A (attached) and the Total Package shall be as follows:

August 1, 2003 total package \$46.85 per hour

August 1, 2004 total package \$47.85 per hour

August 1, 2005 total package \$48.85 per hour

August 1, 2006 total package \$50.10 per hour

August 1, 2007 total package \$51.35 per hour

Section 2. Foreman Rate:

Foremen shall receive the Journeyperson Taxable Net Wage Rate plus:

- (a) Two dollars (\$2.00) per hour when in charge of three (3) or more employees.
- (b) Four dollars (\$4.00) per hour for General Foreman.

Section 3. Overtime Payments: All overtime shall be paid at the rate of one and one-half (1 1/2) times the basic wage rate except Sundays and all Holidays listed in Article 11, Section 7, which shall be paid at the rate of double time. If work is performed on Designated Days Off, wages will be paid at one and one-half (1 1/2) times the Basic Wage Rate. Copies of overtime checks shall be mailed to the Local Union issuing the overtime permit, when requested by the Union.

- (a) If inclement weather forces a job to be shut down during the regular work week, Monday through Friday, then the Contractor can work his crew on Saturday at Straight Time. A Saturday straight time day will only apply if inclement weather forces a job to shut down during the regular current work week (Monday through Friday). The Contractor can work only that crew which is already on the job site at the time that inclement weather forced the shutdown. In order to qualify to receive a Saturday straight time permit, the Contractor must contact the Local Union, supplying the union with job site information, date of inclement weather and name of employees.

Section 4. Handicapped workers whose earnings capacity is limited because of age, physical disability or other infirmity, may be employed at a wage below minimum upon approval of the District Council but they shall not be employed for lesser wage than seventy-five percent (75%) of the Journeyperson hourly rate. Said workers need not be employed unless requested by employers.

Section 5. Subsistence and Expense: Employees shall be paid seventy five dollars (\$75.00) a day, or reasonable room and board, which ever is higher, seven (7) days a week for such a period as he/she is required to live away from his/her place of residence. Such maintenance shall not be

considered wages and shall be paid by separate check. In addition, they shall receive the negotiated rate of pay and fringe benefits.

Section 6. Travel Expense: Where employees are required to use their private vehicles to the job site to work, beyond a fifty (50) mile radius, from the point of dispatch, (union dispatch office, employees home or individual Employer shop), the employee shall be paid at twenty five cents (\$0.25) per mile. If the Employer asks the employee to use a company vehicle or car pool, and the employee refuses, the employee is not entitled to travel expense.

- (a) **Travel Time:** Employees required to work beyond a fifty (50) mile radius from the point of dispatch (union dispatch office, employees home or individual Employer shop) as determined by the individual Employer, shall receive compensation of basic wage rate for all time traveled over the fifty (50) mile radius. Mileage is to be based on speedometer reading by the most direct route to the job and return.

Section 7. All parking and bridge tolls to be paid by the Employer, whenever employees use same. Receipts for parking must be turned in to the Employer for reimbursement on a weekly basis. All reimbursements for parking are to be paid weekly and in full at time of lay-off or termination.

Section 8. Semi-annual and/or annual bonuses shall be permitted under the Agreement without the payment of fringe benefits on same.

Section 9. All wages shall be due and payable either in lawful currency or negotiable check, together with a receipt or check stub showing the employee's and Employer's name, rate of pay, dates and hours worked, all deductions made and amounts due. Said payments shall conform with all the provisions pertaining to the employees as required by Federal and State Laws. Violations of this clause shall be deemed sufficient reason for removal of employees by the Union Representative and said removed employees shall be paid waiting time as per Section 13 of this Article. Wage claims and claims for payment of Fringe Benefit contributions need not be submitted to grievance or arbitration but may be submitted by the Union directly to the Labor Commissioner of the State of California for adjudication.

Section 10. Employers giving checks to employees which are returned as non-negotiable shall be subject to the same penalties as are provided in Section 13.

Section 11. Wages earned shall be due and payable on the last day of each regular work week (refer to calendar pages) on the job at quitting time and shall include all wages earned up to and including Tuesday night: except that by application to the Union, an employer may obtain special permission to include on his/her payroll only such wages as were earned up to and including Monday night. This exception, which must first be approved by the Union, is intended to be allowed only in those instances where the preparation of large and/or scattered job payrolls cannot reasonably be accomplished in time to meet the Tuesday night provision. When a holiday falls on Friday, all wages earned up to and including Tuesday night shall be due and payable on Thursday on the job at quitting time.

Section 12. Employees laid off or discharged must be paid in full on the job at the time of dismissal.

Section 13. If the Employer fails to pay his/her employees within the stipulated time, he/she shall pay any employee who waits for payment, such waiting time, including Designated Days Off, Saturdays, Sundays and holidays, at a rate of straight time, at eight (8) hours per day.

Section 14. The refunding of wages earned (commonly referred to as “kick-back”) by an employee or the acceptance of said refund (or "kick-back") by an Employer as defined herein shall constitute a distinct and separate violation of this Agreement and shall necessitate such action as is hereinafter stipulated under the Article covering Violations. This Article shall be in addition to any right occurring under Sections 221 and 225 of the Labor Code which makes “kick-backs” punishable by fine and imprisonment.

Section 15. The Union, by referendum vote of the members, can change the wage increase or portion of such increase to existing Fringe Benefits, New Fringe Benefits, or deferred income annuity. The Employer shall be notified of such change at least thirty (30) days prior to the effective date.

During the term of this Agreement, the wages and fringes that are due on certain dates shall be paid on that date. In the event the Employer is restricted by government action from making such payment, such monies shall be placed in an escrow account established by the signatory parties, in a bank, through the Bay Area Painters and Tapers Trust Funds, if possible. The payments are to be paid into the Escrow Account each month. The monies shall be disbursed to the employees when legally possible to do so. In the event it is not legally possible to disburse the monies to the employees or their beneficiaries in case of death, the monies shall be returned to the Employer as soon as legally possible. The Union shall indemnify each Employer against any claims or loss due to compliance with the above.

Section 16. Clean-up Classification of Work: Employees working under terms of this Section shall be confined to performing work not normally performed by Journeyman Tapers and/or Apprentices, working under the terms of this Agreement. This classification shall be limited to clean-up, erection of interior OSHA approved scaffold, masking, warehouse work, truck and forklift driving and stocking of taping materials.

Any phase of gypsum wallboard finishing is prohibited. If the Employer wishes to move an employee working under this Section to actual gypsum wallboard taping as an Apprentice, he/she will have the employee make regular application to the Bay Area Joint Apprenticeship Committee and be covered under all the terms of the California State Apprenticeship Agreement. If an employee who is not eligible for apprenticeship is used in any manner other than as a clean-up person, he/she shall be paid Journeyman taper wages including all fringe benefits.

(a) Wages, Fringe Benefit Payments:

- (1)** 45% of Taper Journeyman Basic Hourly Wage Rate

- (2) Health and Welfare as per Northern California Drywall Finishers Master Agreement
- (3) Dues Check-Off as per Northern California Drywall Finishers Master Agreement

(b) **Hours of Work:** Hours of work, overtime and Holiday pay, shall be the same as in the Northern California Drywall Finishers Master Agreement.

Section 17. Shop Person: One (1) shop person per contractor. Shop person is to be a Member of a Local Union. Wage twelve dollars (\$12.00) per hour plus Health and Welfare, Dues Check-Off and Apprentice Fund. Duties: truck repair and maintenance, tool repair and maintenance, transport materials to job site, an all around gofer. Cannot perform any work covered under the scope of this Agreement.

Section 18. Validity and Applicability Clause: If any provision of this Article is declared invalid or the applicability thereof to any person, circumstance or thing is held invalid, the validity of the remainder of this Article and/or the applicability thereof to any other person, circumstances or thing, shall not be affected thereby.

Section 19. Safety: The Employer shall provide and maintain safe working conditions for employees, and abide by all the safety rules of the State and Municipal Departments, Commissions and Health Officers. NOTE: This Section also applies to Federal Davis-Bacon work or State of California Prevailing Wage Work providing that it is approved by the contracting agency (State or Federal).

Section 20. The parties to this Agreement recognize the necessity of assuring the competitive position of the parties within the industry during the term of this Agreement. Consistent with that recognition, the parties will continually monitor the effectiveness of the Agreement relative to specific geographic or market areas and will endeavor, by mutual agreement to initiate such changes to the Agreement during it's term as may be necessary to assure the work opportunities of the employees and the competitive position of the individual Employers.

Section 21. Project Agreements: The District Council may write "Project Agreements" as needed, to combat non-union work of any type.

ARTICLE 10

DUES CHECK-OFF

Section 1. During the term of this Agreement, all Signatory Employers agree to deduct from the wages of all employees covered by the Agreement for Dues Check-Off the amounts specified in Schedule A. Said Dues Check-Off shall be remitted to the Bay Area Painters & Tapers Trust Funds office on forms provided by the Trust Funds, or other appropriate depository designated by the Union, not later than the twentieth (20th) day of each and every calendar month for such

deductions made during the preceding calendar month, provided that the employees in question signed a valid authorization card authorizing such deductions.

Section 2. Each Employer agrees that, at the time of employment of any employees covered by this Agreement, such Employer shall secure from said employee a Work Referral Slip and said slip shall indicate that an Authorization Form has been signed by said employee, and is on file at the appropriate Local Union office. The Employer will be provided with a copy of the Authorization Form upon request.

Section 3. If an Employer fails to secure a Work Referral Slip from an employee of the Union, said Employer shall be responsible for payment of Dues Check-Off to the Union on all hours worked by said employee.

ARTICLE 11

WORKING CONDITIONS

Section 1. Eight (8) consecutive hours shall constitute a day's work between six (6:00) a.m. to four-thirty (4:30) p.m. on Monday, Tuesday, Wednesday, Thursday and Friday (except those designated as Off-Days).

Section 2. All other time than mentioned shall be considered overtime. Employees shall not report to any shop earlier than thirty (30) minutes nor to any job earlier than twenty (20) minutes before starting time. These provisions shall apply only to work within the confines of the city or town of the Employer signatories hereto. Reporting to work on out-of-town jobs shall be in accordance with the provisions of "Travel Time" herein defined.

Section 3. The preparations of materials and equipment and the cleaning up and removal of same, is to be performed within the eight (8) hours.

Section 4. Employees who report prepared for work at the time that they are instructed by the Employer or Employer's agents and who are not placed to work, shall be paid two (2) hours pay, and if placed to work must be employed for, at least, four (4) hours, except where employees are not put to work because of inclement weather, and/or dismissed for cause and the Local Union notified. Employees working seven (7) hours of an eight (8) hour day shall receive a full day's pay, time to be computed starting at eight (8:00) a.m., or the approved starting time, except if the reason for not working the eighth (8th) hour is a climatic condition which prevents continuance of the job. The worker must show up to work with the following tools or he/she may be sent home without "Show-up Pay": 6", 8" and 12" knives, 12" pan, sanding pole, mud beater, work boots and all safety equipment issued by the Employer.

Section 5. Rest periods: Employees shall be allowed a ten (10) minute rest period in the morning and a ten (10) minute rest period in the afternoon.

Section 6. On all new construction and in shops where employees report to work, the Employer shall furnish adequate toilet facilities and drinking water, unless same is provided by others.

Section 7. Holidays: The recognized holidays shall be New Year's Day, Washington's Birthday, Martin Luther King's Birthday, Thanksgiving Day, Memorial Day, Independence Day, Labor Day, Christmas Eve and Christmas Day. When a holiday falls on a Sunday, same shall be observed on the Monday following. When a holiday falls on a Saturday, same shall be observed on the preceding Friday.

(a) DESIGNATED DAYS OFF - In addition to the foregoing recognized holidays, there shall be seven (7) Designated Days Off per contract year:

August 29, 2003, November 28, 2003, December 26, 2003, February 13, 2004, April 9, 2004, May 28, 2004, July 2, 2004, September 3, 2004, November 26, 2004, February 18, 2005, March 25, 2005, May 27, 2005, June 17, 2005, July 1, 2005, September 2, 2005, November 25, 2005, February 17, 2006, April 14, 2006, May 26, 2006, June 16, 2006, July 3, 2006, September 1, 2006, November 24, 2006, February 16, 2007, April 6, 2007, May 25, 2007, June 15, 2007, July 5, 2007, August 3, 2007, August 31, 2007, November 23, 2007, February 15, 2008, March 21, 2008, May 23, 2008 and June 13, 2008

Section 8. No work shall be performed during any hour of the twenty-four hours of Labor Day.

Section 9. No overtime work shall be performed without a permit from the Local Union in the area where the work is being performed.

Section 10. SHIFT WORK

Shift work can only be established upon prior notice from the individual Employer to the Union. No shift work shall be performed without a permit from the Union, which shall be issued on an overtime form.

Where multiple shifts are worked, if the individual Employer elects to work the day shift between the hours of six (6:00) a.m., five-thirty (5:30) p.m., that shift shall work eight (8) hours and for such work they shall be paid the regular straight time rate for eight (8) hours; the second shift shall work seven (7) hours, and for such work they shall be paid the regular straight time rate plus ten percent (10%) for eight (8) hours, if a third shift is worked, they shall work seven (7) hours and for such work they shall be paid the regular straight time rate plus fifteen percent (15%) for eight (8) hours. No shift work shall be established or started for less than five (5) consecutive work days Monday through Friday. Overtime rates shall be paid for all hours worked on the second or third shift if less than five (5) consecutive days are worked Monday through Friday. The provisions of this Section with regard to rates of pay for shift work shall apply solely to the portion of the job which requires shift operations.

Notwithstanding the multiple shift five (5) consecutive day requirement, a single or multiple approved shift may be established where the premises cannot be vacated in whole or in part until the close of business. Employees then reporting for work shall be paid on the basis of the above referenced second and third shift pay and hours. Any work prior to the approved shift period shall be at time and one-half not to exceed four (4) hours. Overtime worked in excess of four (4) hours shall be double time.

On shift work:

- (a) Employees working a shift who come off work on Saturday morning at eight (8:00) a.m. are to be considered working Friday
- (b) Employees working a shift who come off work on Monday morning at eight (8:00) a.m. are to be considered working on Sunday

All regularly scheduled shift work performed on Saturday, Sunday and holidays shall be in accordance with the overtime rates and conditions of this Section as to hours worked and rate of pay.

Whenever conditions that would impede the normal progress of the job exist, the parties to the Agreement may mutually agree on the establishment of a change in the starting of shifts that deviate from the provisions of this Article. Such agreements shall be made in writing and shall be signed by the Employer and the Business Representative.

Payments or contribution to each of the Trust Funds provided for in this Agreement shall be based on hours paid for, which include contributions for eight (8) hours per shift. No payment or contribution shall be computed at the rate of time and one-half or double the required rate of payments or contributions per hour, nor shall any such payments or contributions be considered part of the hourly wage rate for the purpose of computing overtime, either under the Agreement, the Fair Labor Standards Act, the Walsh Healy Act or any other law.

Section 11. Employees shall not work on a piecework basis, nor be permitted to contract or subcontract.

Section 12. No employee shall furnish to an Employer for rent or otherwise any car or truck, rigging or tools, except employee cartage shall be permitted for two (2) units of joint compound, i.e. two (2) boxes or two (2) bags.

Section 13. Tools:

The following tools and equipment are recognized as acceptable for the purpose of wall board taping: Easy joints (or equivalent), Advanced Knives, Broad Knives or similar tools, and mechanical Taping Machines with the tools incidental thereto. Such Taping Machines shall be the types (or equivalent) in use as of July 1, 1959 in the area covered by this Agreement. (Any type of machine that is drastically different from the foregoing cannot be used.)

The Employer shall furnish all tools with movable parts. Other than hand tools of the trade, the Employer shall furnish all other tools. Employees shall not be allowed to attach any artificial equipment such as stilts, arms, or legs to their bodies in any manner whatsoever. The Employer based on the scope of work to be performed, shall designate what personal tools will be required and supplied by the employee.

Section 14. Removal of Debris:

Before Taper employees commence work, the Employer shall remove all debris from the work area. In the event debris is not removed, the Union Representative may remove employees from the work area. Such employees shall be paid for loss of time. The Employer or the Employer's supervisory employee shall immediately notify the Union of the area of all on-the-job accidents.

Employees injured on the job shall be allowed to visit the Employer's compensation doctor or county emergency medical service. In the event the Employer does not designate the doctor, the employee shall go to the doctor of his own choice.

Section 15. Employees may be required by the Employer to sign for taping tools with moving parts (copy of signed form must be presented to employee) and shall be held accountable for the tools.

ARTICLE 12
SPRAY TEXTURE – PAINTING

Section 1. Employers signed to this Agreement who do painting work must follow the use of tool regulations as per the Painting Agreement of the area where the work is being performed.

Section 2. Spray Texture:

- (a) After three (3) coat taping method (tape-top-skim) patterns may be sprayed, provided the texture is of sufficient hardness that paint can be applied.
- (b) Acoustic type texture may be sprayed on ceiling and drop ceiling areas. For new work, two-coat taping method (tape and top) must be applied first.

ARTICLE 13
STEWARDS

Section 1. The District Council shall be empowered to appoint and remove all shop and/or job stewards as required in any shop or job of an Employer signatory to this Agreement. Steward will be a competent Journeyman currently employed by the Employer at the time of appointment.

Section 2. Duties: Such duties shall include monitoring the provisions of this Agreement, checking all working cards of Foreman, Journeyman and Apprentices and to check all applications, working permits, and to report the same by the use of Steward's Report to the Business Representative of the Union. Steward shall work with the tools as well as doing the duties assigned by the Union.

Section 3. The Steward shall report to the Business Representative of the Union and to the Employer or his Representative, any and all violations of the working Agreement.

Section 4. All matters of consequence pertaining to jurisdiction, alleged grievances due to unfair treatment by the Employer, are to be reported to the Union for action as may be deemed necessary.

Section 5. The Steward shall be the last employee laid off provided he/she is qualified and able to do the job available to him/her.

ARTICLE 14 **VIOLATIONS**

Section 1. Any Employer who fails to pay his/her contributions for welfare coverage herein provided for, shall be held personally responsible and liable to any employee covered by this Agreement for the benefits which would have been provided by such welfare coverage.

Section 2. In the event that an Employer submits two (2) or more Welfare Premium Forms marked "No Employees", any Business Representative of any involved Local Union may make an investigation of such Employer.

Section 3. Employees shall not enter the employ or remain in the employ of any Employer or Drywall Contractor who willfully neglects or refuses to abide by a decision rendered pursuant to the provisions of this Agreement.

Section 4. No signatory Employer shall work for or with or employ on any job another signatory Employer who is acting in violation of this Agreement, or who has failed or refused to comply with any decision rendered, pursuant to provisions of this Agreement.

No employee shall work for or with or become employed on any job of a signatory Employer who is acting in violation of this Agreement or who has failed or refused to comply with any decision rendered pursuant to provisions of this Agreement.

Section 5. Business Representatives of the District Council shall be informed immediately of any violation. Business Representatives shall not be allowed to remove Journeyman Tapers and Apprentices from any and all jobs unless the contract violation involves failure to pay proper wages, failure to pay Fringe Benefits, failure to meet all financial obligations provided for by this Agreement, safety reasons, working overtime without a permit and a non-union person on the job. Employees removed from any job for such violations shall be paid by the contractor the amount at the rate of straight time to compensate them for the inconvenience and loss of time due to said violations. It shall be a violation of the Agreement for failure to report violations of the Agreement.

ARTICLE 15

GRIEVANCE AND ARBITRATION

Section 1. For all purposes of this Agreement, a grievance is any dispute or controversy between the Company, the Union and any employee covered by this Agreement, involving the meaning, interpretation or application of the provisions of this Agreement.

Section 2. Procedures

Such grievances shall be handled in the following manner:

- (a) The aggrieved employee or Union Representative shall present the grievance in writing to the designated representative of the company and shall meet with that representative to discuss the grievance.
- (b) If no settlement or resolution is reached within five (5) working days after the meeting referenced above, it may be submitted, at the request of either party, to the Drywall Joint Adjustment Board by written notice to the other party and the Drywall Joint Adjustment Board within fifteen (15) working days from the date of the above-referenced meeting. The Drywall Joint Adjustment Board shall schedule a grievance meeting within fifteen (15) days of being notified. The Drywall Joint Adjustment Board shall, at the conclusion of said meeting, render its decision in writing to both parties. In the event that the Drywall Joint Adjustment Board deadlocks, either party may, within fifteen (15) working days of being notified of the deadlock, request arbitration by written notice to the other party.
- (c) The Drywall Joint Adjustment Board shall be composed of an equal number of representatives, not to exceed four (4). District Council 16 shall be entitled to two (2) representatives. The Northern California Drywall Contractors Association (NCDCA) shall be entitled to two (2) representatives. A majority decision of the Drywall Joint Adjustment Board shall be final and binding on all parties.

Section 3. Arbitrator

If the parties cannot reach agreement on an impartial arbitrator, either the Union or the Company may request the California State Conciliation Service to submit a list of five (5) arbitrators to the parties. The list shall contain only established arbitrators in the state of California. Each party shall alternately scratch two (2) names from the list, the first scratch being selected by lot, and the person remaining shall be the arbitrator.

Section 4. Hearing

The impartial arbitrator shall hold a hearing as soon as practicable, and shall issue an award which shall be final and binding upon the Union, the Company and any employee involved in the grievance or dispute.

Section 5. Amend Agreement

The arbitrator shall have no authority to amend, add to or subtract from this Agreement, except where specifically authorized to do so by this Agreement. The arbitrator shall have the authority to fashion a remedy.

Section 6. Expense for Arbitration

The party losing the arbitration shall pay the arbitrator's charges. Cost of the hearing room shall be shared by both of the parties. The cost of the transcript if requested by both parties shall be shared equally. If there is any question who lost the arbitration, the arbitrator shall decide who shall pay the expenses of the arbitrator whether in whole or in part.

Section 7. Fourteen (14) Day Limit

Matters not presented to the Employer or the Union in writing within a period of fourteen (14) working days after the action, lack of action or condition constituting the basis of the complaint occurs, shall be deemed waived and shall not be subject to the grievance procedure or arbitration procedure as set forth above.

Section 8. Union Economic or Legal Action

In the event of a failure by the Employer to pay the wages or fringe benefits required by this Agreement, and the Employer raises no question concerning the interpretation or operation of this Agreement or concerning his obligations to pay remedies as it sees fit with respect to the Employer, and any economic action taken will not be considered a violation of this Agreement. However, the Union may, if it so desires, utilize the provisions of this Article with respect to the Employer.

- (a) Before resorting to any economic remedy as above permitted, the Union must give the Employer involved two (2) business days written notice of its intention to take such economic action. No economic action may be taken by the union if prior to the taking of such action the Employer has raised a question concerning the interpretation, application or operation of this Agreement or concerning his obligation to pay wages or fringe benefits in dispute, and had deposited the full amount in dispute with the appropriate Trust Fund to be held by the Trust until the matter is resolved under the procedures set forth herein. The provisions for notice in this paragraph shall not apply to any action taken by the Union pursuant to Article 14.

ARTICLE 16

SEPARABILITY AND SAVINGS CLAUSE

If any Section, paragraph or Article of this Agreement should be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any Section, paragraph or Article should be restrained by such tribunal pending a final determination as to its validity, the remainder of this Agreement or the application of such Section, paragraph or Article to person or circumstances other than those as to which it has been held invalid or as to which compliance with or enforcement of has been restrained shall not be affected thereby.

In the event that any Section, paragraph or Article is held invalid or enforcement of or compliance with any Section, paragraph or Article has been restrained, as above set forth, the parties affected thereby shall enter into immediate collective bargaining negotiations, upon the request of either party, for the purpose of arriving at a mutually satisfactory replacement for such Section, paragraph or Article, during the period of invalidity or restraint. If the parties do not agree within a period of sixty (60) days on a mutually satisfactory replacement, either party shall be permitted all legal or economic recourse in support of its demands notwithstanding any provisions in this Agreement to the contrary.

It is understood and agreed that at such times as existing Federal Laws containing restriction on the form of Union recognition and Union security provision may be amended so as to make legal conditions and requirements other than those contained in this Agreement, then and in that event, either party to this Agreement may upon thirty (30) days notice in writing, given to the other party, reopen Article 7 of this Agreement for the purpose of negotiating changes in these Articles.

ARTICLE 17

ADMINISTRATION OF FRINGE BENEFITS

Section 1. Retroactive Continuation of Trust:

The Employer(s) signatory hereto hereby accepts and agrees to the continuation of the following Trust Funds:

1. Bay Area Painters and Tapers Pension Fund
2. Bay Area Painters and Tapers Health Fund
3. Bay Area Painters and Tapers Beneficial Fund
4. Bay Area Painters and Tapers Supplementary Holiday Fund
5. Bay Area Painters and Tapers Death Benefit Fund
6. Bay Area Painters and Tapers Joint Apprenticeship Training Fund

The Trust Agreements creating said Funds are hereby incorporated by reference into this Collective Bargaining Agreement, in their entirety. Each Employer hereby designates the current Employer Trustees (or their successors) as their Trustees for all proper and lawful trust purposes as provided in the Trust Agreements and as required by law.

Section 2. Rules of Fringe Benefit Coverage:

PERSONS NOT COVERED: The following persons will not be covered by any of the fringe benefits provided by the Collective Bargaining Agreement or the above referenced Trust, and no fringe benefit contributions shall be required or accepted by the Trust for the hours worked by such persons for the Employer(s), no matter what type of work performed by such persons:

- (a) Sole proprietors
- (b) The person identified as the partner or corporate officer authorized to work with the tools.

- (c) Office and executive personnel of the Employer, such as estimators, and all other employees of the Employer, who do not perform work covered by this Collective Bargaining Agreement.

PERSONS COVERED: The following persons shall be covered by the Fringe Benefit Trust and Fringe Benefit contributions shall be required (as provided in this Collective Bargaining Agreement) for all hours worked by such persons performing work covered by this Agreement:

- (a) All employees of the Employer who perform work covered by this Agreement regardless of their classification, including but not limited to journey person, apprentices, foreman, superintendents, or drivers.
- (b) All relatives of the Employer, whether paid or unpaid, who perform work covered by this Collective Bargaining Agreement.
- (c) Subcontractors of a signatory contractor, and the subcontractor's employees, who perform work covered by this Collective Bargaining Agreement, unless the subcontractor is signatory to this Collective Bargaining Agreement and also possesses a California State Contractors License in which case the subcontractor shall be responsible for the payment of the fringe benefit contributions.
- (d) All partners, joint ventures, officers and directors of a corporation except those excluded in 2(b) above who perform work covered by this Agreement.
- (e) Responsible Managing Employees for contractors licensing purposes who perform work covered by this Collective Bargaining Agreement.
- (f) Any person who performs preparation or clean-up on work covered by this Collective Bargaining Agreement unless Fringe Benefits are being regularly paid to some other Fringe Benefit Trust Fund for such person.
- (g) Whenever an employee appears on work defined as work covered by this Collective Bargaining Agreement and he/she appears as an employee or subcontractor for other work on the Employer's records, Fringe Benefit contributions shall be paid. The hours due shall be computed at the rate for Journey person wages per hour when lump sums have been paid.

Section 3. Contribution:

Each Employer shall pay to the Trusts such amounts as are now, or may hereafter be, agreed to in the Collective Bargaining Agreement. Such contributions shall be made in accordance with Collective Bargaining Agreements, the Trust Agreements, and such regulations of the Trustees as are not inconsistent therewith, for all covered persons. Contributions shall be due and payable on the first (1st) day of each month for the monthly payroll period immediately preceding, and each monthly payment shall include contributions for all payroll periods which ended during the preceding month. Such contributions shall be paid to the Trust office. If payments of contributions are not made or if the forms or reports required by the Board of Trustees are not

received at the principal office of the Trust by the twentieth (20th) day of the month, the Employer shall be deemed delinquent. Payment shall be on time if deposited in the United States mail, postage prepaid, and postmarked prior to midnight of the twentieth (20th) day of the month. If an Employer is delinquent for two (2) consecutive months or for three (3) months in any one (1) year, the Employer shall be deemed a "chronic" delinquent Employer and the contributions shall be due and payable on the first (1st) day of each month for the monthly payroll period immediately preceding as in the case of all Employers but shall be deemed delinquent if payment is not received at the Trust office by the fifth (5th) day of the month. If payment is not received by the fifth (5th) day of the month, the "chronic" delinquent Employer will be assessed the liquidated damages of paragraph 5 below said Employer shall post a surety bond to the Trust Funds as provided in paragraph 12 below. Further, the Trustees may, within their sole discretion, require "chronic" delinquent Employer to file contribution report forms and make contribution payments at more frequent intervals than monthly.

All Trust Fund contributions shall be held in trust by the Employer signatory to this Agreement until paid to the Trust Fund.

A person who signs a counterpart of this Agreement as an Employer, whether individually or on behalf of a partnership or corporation, shall be personally liable for the fringes of any other firm in which he/she is or becomes the Responsible Managing Officer or the Responsible Managing Employee for the Contractor's License purpose or in which he/she has an ownership interest and such other firm shall also be bound to this Agreement as a successor entity.

Section 4. Collection of Contributions:

The Trustees may, in their sole discretion, sue an Employer in court for violation of any provision of this Collective Bargaining Agreement relating to Fringe Benefit contributions without first resorting to or utilizing the grievance and arbitration provisions of the Collective Bargaining Agreement.

The Trustees may bring suit (to compel an Employer to submit to an audit of its records, to collect fringe benefit contributions, or to enforce any other provision of the Agreement) in the City and County of San Francisco, or, at their sole discretion, in any other location where proper legal venue exists.

Section 5. Liquidated Damages:

Insofar as payments by the individual Employer into the Trust Funds are concerned, time is of the essence. The parties recognize and acknowledge that the regular and prompt payment of amounts due by individual Employers to the Trust Funds is essential to the operation of the Trust Funds and the provision of benefits under the Health, Pension, Vacation and other benefit plans and that it would be extremely difficult, if not impractical to fix the actual expense and damages to the Trust Funds and to the covered employee(s) which would result from failure of an individual to make such monthly payments in full within the time provided. Therefore it is agreed that the amount of damage resulting from such failure to make contributions hereunder before the fifteenth (15th) day of the month (or such other day established from the Employer as provided for herein) in which they are due shall be, by way of liquidated damages and not as a penalty, the sum of thirty dollars (\$30.00) for each such failure to pay in full within the time

provided or ten percent (10%) of the amount due and unpaid whichever is the greater, which amount shall become due and payable to the Trust Funds at the principal office of the Trust Funds upon the day following the fifteenth (15th) day (or such other day established for the Employer as provided for herein) of the month in which such delinquency occurred, and shall be added to and become a part of said amount due and unpaid the whole thereof shall bear interest at the rate of seven percent (7%) per annum until paid. If any individual Employer defaults in the payment of any payments due the Trust Funds, in addition to the amount due and the liquidated damages provided for in this Section, there shall be added to the obligation of the defaulter all reasonable expenses incurred by the Trust Funds, in the collection of the same, including but not limited to, reasonable attorney's and accountant's fees, costs of attachment bond, court costs and all costs of collection after a judgment is obtained. In addition to the foregoing, it shall not be a violation of the Collective Bargaining Agreement for the Union to refuse to refer or supply workers to any job or to withdraw employees from the job or jobs of a delinquent individual Employer.

Section 6. Monthly Contribution Report Forms:

On forms furnished to them by the Trust Funds, Employers shall furnish to the Trustees a written monthly report setting forth the names, social security numbers and all hours worked by each covered person employed or if no such employees have worked during the month involved, a statement to that effect shall be made on each form. A copy of such form so executed will be delivered by the Employer with his/her payment to the Trustees, said form to be retained by the Trustees as part of their permanent record. If payment is made in cash, the Trustees, will acknowledge such payment by official receipt. The information furnished by the Employer on the foregoing prescribed forms shall be treated as confidential by the Trustees and by the personnel of the Funds office, to be used only for the purpose intended, namely to evidence the Employer's compliance with the provisions of this Article. This information from the Employer shall not be made available to any individual agency outside of the Fund's office except; the Employer involved, authorized personnel of the District Councils, Local Unions and Associations or for the purpose of statistical information in which event the Employer's name shall not be publicized. (The foregoing shall not be construed to prohibit in any way the regular issuance of delinquency and reinstatement reports to the signatory organizations.) The contributions report forms shall be sent to the Trustees with the Employer's contributions as provided in paragraph 3 above.

Section 7. Records to be kept by Employers:

Employers shall keep weekly time cards on which shall clearly appear the employee's full name and social security number, the job location, the hours worked each day and total hours worked each week, showing total straight time hours and total overtime hours. The time card shall be signed by the employee. The time card shall also show the type of work performed, if other than work covered by this Agreement.

Each paycheck and each stub or copy shall clearly indicate the employee's name, date of payment, pay period covered and shall include:

- (1) Total straight time hours worked and rate of pay

- (2) Total overtime worked and overtime rate
- (3) Total gross wages paid
- (4) Deductions itemized
- (5) Net pay for period

If an Employer fails to keep records as above required, it shall be conclusively presumed that all sums paid to individuals by such Employer were wages for work covered by this Agreement.

Section 8. Audits of Employer Records:

The Trustees, or their authorized representatives, may require any association, any Employer, the Union, any labor organization or any beneficiary to submit to it any information relevant to the administration of the Trusts. Upon notice in writing from the Trustees, an Employer must permit an accountant of the Trustees to enter upon the premises of such Employer during business hours to examine and copy the following records of the Employer:

- (a) Canceled checks and check stubs showing all monies paid to each employee of the Employer for wages.
- (b) Canceled checks, check stubs and business records of the Employer showing all sums paid to persons other than employees for work performed such as subcontractors, relatives, partners, and joint ventures of the Employer.
- (c) The individual earnings records of each employee of the Employer showing the name and address of the employee, social security number, wage rate, hours worked, gross pay, amount withheld and net amount paid each employee.
- (d) Copies of all fringe benefit monthly contribution report forms prepared for filing with the Bay Area Painters and Tapers Trust Funds and/or any other employee benefit trust fund(s) for each month.
- (e) Those canceled checks showing sums actually paid by the Employer to the Bay Area Painters and Tapers Trust Funds for each month.
- (f) Copies of the Employer's Quarterly Federal Tax Return Form 941 for each quarter and copies of Quarterly State Tax Returns DE 3 for each quarter.
- (g) Individual employee's time records for each employee of the Employer.
- (h) Records of each job involving application of paint or drywall taping by the Employer, to the extent the Employer has control of such records and that such records exist including:

- (1) Name and address of the owner of the property where painting or drywall taping was done
- (2) Street address where painting or drywall taping work was performed
- (3) Total payroll cost of each job
- (i) Copies of Federal Forms W-2 and W-3 prepared by the Employer for each employee.
- (j) Disbursement Journal of the Employer.
- (k) Payroll Journal of the Employer.

In the event that such examination of such Employer's records reveals that such Employer is not making full and prompt payments of all sums required to be paid by him to the Funds, then such Employer shall pay to the Funds such costs, including accountant fees, as may have been reasonably incurred in making such determination. Upon the written request of the Trustees, or their duly authorized representative, such Employer may be requested to bring his records for auditing to the San Francisco office of the Funds.

Section 9. Erroneous Payments:

An Employer shall be entitled to credit against future Employer contributions or refund of money paid to the Funds by reason of clerical or administrative error or mistake as to the amount owing to the Trust on the following conditions:

- (a) written application is made within one (1) year from the date of erroneous payment and
- (b) the Trust Funds have made no disbursements on behalf of employees based upon the erroneous contributions.

Section 10. Notice to Union in Event of Delinquency:

Without limiting the rights to resort to economic action elsewhere provided in this Agreement, when the Board of Trustees by reason of an audit of any Employer's records, by reason of a check stub analysis, or by other means as determined that an Employer probably owes past-due fringe benefit contributions, or when an Employer has failed to furnish monthly fringe benefit reports or has failed to pay the fringes shown to be due on the fringe benefit reports, the Board of Trustees shall notify District Council 16.

Section 11. Suits by Trustees on Behalf of Employees:

In addition to the right herein granted to the Trustees to file legal action on behalf of the Funds for the collection of any contributions and/or other amounts due and owing by any Employer, the Trustees shall be entitled to and may file legal action on behalf of an eligible employee who has been deprived of accrued benefits by reason of the failure of any Employer to make payments to the funds, as herein required, for such accrued benefits. If by any such action plaintiff is

sustained, then in addition to the payment of the accrued benefits to which such employee is entitled or the Funds may be entitled, together with the legal rate of interest, the Employer shall also be liable to pay all costs of suit or suits and reasonable accountant's and attorney's fees.

Section 12. Bonding:

Each Employer shall, within ten (10) days of mailing of notice by the Administrator of the Trust Funds, obtain a wage and fringe bond in a sum equal to the greater of five-thousand dollars (\$5,000.00) or one-third (1/3) of the wages and contributions made or due under the terms of this Agreement, or the Agreement immediately preceding this Agreement, by such Employer in the twelve (12) month period just prior to the mailing of said notice. Such amounts are to be determined by the said Administrator. Such bond is not in any way to be construed as in lieu of payments required pursuant to this Agreement. All such bonds shall be deposited with the Bay Area Painters and Tapers Trust Funds and shall be in a form acceptable to the Trustees.

Each Employer must comply with the bonding provisions of this Agreement if the Employer has less than twelve (12) consecutive months of prompt and proper payment of wages to his employees as shall be determined by the Trustees, or is a chronic delinquent Employer as defined in paragraph 3 above. Delay in payment of wages or fringe benefit contributions occasioned by accident or inadvertence during such twelve (12) month period may be excused by the Trustees and not require the imposition of the bond. When any Employer, after having deposited said bond, attains a record of twelve (12) consecutive months of prompt, timely and proper payment of wages and Trust Fund contributions, he/she may have said bond, returned upon proper application to the said Administrator and the approval of the Trustees. If the bond must be used to make any payment of wages or contributions to the Trust Funds, the money shall first be applied to the payment of wages to employees working under this Agreement and the balance shall be prorated among the amounts due by the Employer to the various Trusts. In the event an Employer fails to deposit a satisfactory bond within the time provided and the notice herein provided has been given, the Union shall dispatch no workers to such Employer and the Union is hereby authorized to withdraw any and all of the employees of such Employer subject to this Agreement from work covered by this Agreement and such withdrawal shall not, so long as the bond is not deposited, be a violation of this Agreement.

Any employees so withdrawn or refusing to perform any work as herein provided in this Article shall not lose their status as employees, but no such employees shall be entitled to claim or receive any wages or other compensation for any period during which he/she has been so withdrawn or refused to perform work, except, the full days wages due on the date of such withdrawal or refusal, plus any waiting time.

ARTICLE 18
SAFETY

Section 1. In accordance with the requirements of the Occupational Safety and Health Act of 1970, it shall be the exclusive responsibility of the Employer to ensure the safety of its employees and compliance by them with any safety rules contained herein or established by the

Employer. Nothing in this Agreement will make the Union liable to any employees or to any other persons in the event that work-related disease, sickness, death, injury or accident occurs.

The Employer will not engage in any litigation against the Union, or a subrogation theory, contribution theory, or otherwise, so as to obtain a money judgment from it in connection with any work related disease, sickness, death, injury, or accident.

Section 2. Work Stoppages: There shall be no stoppage of work either by strike or lockout by the parties hereto, except as provided for elsewhere in the Agreement.

It shall not be a violation of this Agreement, and it shall not be cause for discharge or disciplinary action, in the event an employee refuses to enter upon any property involved in a lawful primary labor dispute, or refuses to go through or work behind any lawful primary picket line of the Union party to this Agreement, and including lawful primary picket lines at the Employer's own place of business or jobs.

Furthermore, recognizing the "Special Problems" in the Construction Industry based upon the close relationship between contractors and subcontractors at the job site of the construction, alteration painting, taping or repair of a building or structure, or other such work and the friction that is created when Union and non-union employees are required to work side-by-side, it shall not be a violation of this Agreement and it shall not be cause for discharge or disciplinary action in the event an employee refuses to enter any such construction site when non-union employees are engaged in such construction on the job site. This clause shall apply only to job sites where the Union's members are working, whether it be on construction site of the Employer or at any other job site.

ARTICLE 19

WORK PRESERVATION FUND

For reasons of traditional policy as well as law, Employee Agencies have maintained a policy of financial independence and there is no intention of the parties to devote any of the Work Preservation Fund contributions provided for herein, to the operation of any of the Employee Agencies or any of their Representatives.

There has been created a separate and independent entity, the Work Preservation Fund, Inc., organized pursuant to the laws of the State of California, as a non-profit California Corporation.

The purposes for which this corporation is formed, are to help to achieve and maintain maximum employment and good workmanship in the painting, decorating, and drywall industries by seeking to expand the work and jobs available to employers and employees, and to help promote the advancement and preservation of the painting, decorating and drywall industries.

The purposes stated above are achieved through the establishment of the Work Preservation Fund, Inc. as a Labor-Management Cooperation Committee under the authority of the Labor-Management Cooperation Act of 1978, U.S.C. Section 175 (a) and 29, U.S.C. Section 186 (c)(9).

The affairs of the Corporation are governed by a Board of Directors representing both labor and management elected by a majority vote of the Board of Directors of the Work Preservation Fund, Inc.

Pursuant to and under the terms of this Agreement, the Bay Area Painters and Tapers Trust Fund office shall collect such contributions for the Work Preservation Fund and shall thereafter each month, forward said monies to the Work Preservation Fund, a California non-profit corporation.

Appropriate records shall be kept and maintained by both, the Bay Area Painters and Tapers Trust Funds and the Work Preservation Fund as to the collection, transmittal and amounts of funds collected on forms to be provided exclusive by the Trust Funds.

The signatory hereto and all employers becoming bound, hereby designate and appoint the present Directors and their duly selected successors as their representatives on such Trust Funds.

The parties to this Agreement may, by mutual consent discontinue this fund at any time or as renegotiated and in that event the hourly contributions will be added to the hourly wage rate.

ARTICLE 20

IUPAT JOINT APPRENTICESHIP TRAINING FUND

We hereby establish under this Collective Bargaining Agreement a provision for affiliation with the IUPAT Joint Apprenticeship and Training Fund (IUPAT-JATF) and further provide a minimum contribution of five cents (\$.05) per hour for each employee covered under this Agreement.

ARTICLE 21

LABOR MANAGEMENT COOPERATION INITIATIVE

We hereby establish a contribution to the Labor Management Cooperation Initiative (LMCI) effective the date of this working agreement and any renewals or extensions thereof.

For each hour or portion thereof, for each employee covered under this Collective Bargaining Agreement, the Employer shall pay five cents (\$0.05) payable to the Trust Fund.

For the purpose of this Article, each hour paid for, including hour attributed to show up time, and other hours for which pay is received by the employee in accordance with this agreement, shall be counted as hours for which contributions are payable.

Contributions shall be paid on behalf of any employee starting with the first (1st) day of employment in a job classification covered by this Agreement.

ARTICLE 22
PERIOD OF AGREEMENT

During the month of January of the year of expiration of this Agreement or during the month of January of the expiration year of any subsequent Agreement, any party signatory hereto may give written notice to the other party that said party wishes to withdraw from the Agreement. Should such notice be given, such party shall no longer be bound to this Agreement as of August 1 of the year this Agreement expires, or as of subsequent August 1 of the year of any subsequent Agreement. This Agreement shall continue as to all parties not giving such notice. Further, said notice of withdrawal eliminates said party from participation in any negotiations regarding this Agreement. The notice herein provided for is the sole means by which a party may withdraw from or cancel this Agreement.

If any provision of the Agreement is declared invalid or the applicability thereof to any person, circumstances or thing is held invalid, the validity of the remainder of this Agreement and/or applicability thereof to any person, circumstance or thing shall not be affected thereby.

This Agreement shall be in full force and effect for a period of five (5) years from August 1, 2003 through July 31, 2008 and remain in full force and effect from year to year thereafter, unless either party hereto shall give notice to the other party, in writing, of their desire to change or revise this Agreement. Such written notice shall be presented to the other party not less than one hundred twenty (120) days prior to the renewal date stipulated hereinabove.

This Agreement may be executed in multiple counterparts and when one counterpart is signed by the Union and one counterpart is signed by the Employer Association, then all counterparts shall constitute, when taken together, one and the same document as if all signatures were contained in the original.

NOTE: Omissions, errors in printing, reference to gender, or sequence of appearance shall not take precedence over nor change the purpose or intent of the original Bay Area Agreements and the negotiated amendments.

SIGNATORIES

This Agreement is made and entered into this first day August, 2003, by and between the members of:

Northern California Drywall Contractors Association or Individual Employers
&
District Council No. 16

District Council 16

NCDCA

Gene Massey
Business Manager/Secretary Treasurer

Ron Becht
Executive Director