

## MEMORANDUM OF UNDERSTANDING

### **SOUTHWEST REGIONAL COUNCIL OF CARPENTERS and DRYWALL/LATHING CONFERENCE OF THE WESTERN WALL & CEILING CONTRACTORS ASSOCIATION, INC.**

It is agreed that the following provisions which reflect discussion between the parties will extend and modify the 2016-2020 Southwest Interior/Exterior Master Agreement between the SOUTHWEST REGIONAL COUNCIL OF CARPENTERS ("Union") and the DRYWALL/LATHING CONFERENCE OF THE WESTERN WALL & CEILING CONTRACTORS ASSOCIATION, INC. negotiating on behalf of its respective members (collectively, "Contractors"):

1. The 2016-2020 Agreement shall be extended for a period of two (2) years, continuing through June 30, 2022.

Article XXIV Section 1 shall be revised and all relevant dates shall be changed throughout the Agreement. The extended Agreement shall be referred to as the extended July 1, 2016 through June 30, 2022 Southwest Interior/Exterior Master Agreement.

2. Add a new Appendix C concerning the Grievance of Disputes to read as follows:

#### **APPENDIX C**

##### **Grievance of Disputes**

The Parties to this Agreement recognize that the Supreme Court of the United States has consistently held for over fifty years that federal law and policy favors the use and finality of arbitration procedures established through collective bargaining agreements to resolve all nature of disputes affecting the employee-employer relationship.

As the designated representative of employees, the Union contracts regarding the specific terms and conditions of employment as well as the enforcement mechanism to ensure those conditions are met, which mechanisms include grievance arbitration. These terms, conditions and enforcement mechanisms are generally superior to those available to employees not covered by collective bargaining agreements. Grievance arbitration provision in a collective bargaining agreement is reflected in national labor laws and is premised on the federal policy to promote industrial stabilization through the collective bargaining agreement. "A major factor in achieving industrial peace is the inclusion of a provision for arbitration of grievances in the collective bargaining agreement." *United Steelworkers of Am. v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 577-78, 80 S. Ct.

1347, 1350, 4 L. Ed. 2d 1409 (1960). *D.R. Horton, Inc. v. N.L.R.B.*, 737 F.3d 344, 361 (5th Cir. 2013) ("[W]e discern[ ] in the structure of the [National Labor Relations Act] the very specific right of employees to complete the collective-bargaining process and agree to an arbitration clause." Citing, *Blessing v. Freestone*, 520 U.S. 329, 343, 117 S.Ct. 1353, 137 L.Ed.2d 569 (1997) (internal quotation marks and citation omitted).

The Parties to this Agreement recognize that the National Labor Relations Board has held that the pursuit of collective or class action claims is concerted action but that a union may waive certain rights to concerted action in a collective bargaining agreement. In doing so, the National Labor Relations Board recognized that a collectively bargained arbitration clause stems from the exercise of rights to act in concert and that "[F]or purposes of examining whether a waiver of Section 7 rights is unlawful, an arbitration clause freely and collectively bargained between a union and an employer does not stand on the same footing as an employment policy... imposed on individual employees by the employer as a condition of employment." *D. R. Horton Inc.*, 357 NLRB No. 184 (January 3, 2012).

The Parties to this Agreement recognize that arbitration pursuant to the grievance procedure affords numerous benefits including expedited resolution of disputes; reduced cost and expense as compared to litigation; potentially greater monetary relief to individual employees; benefit of the arbitrator's knowledge and expertise with the bargaining parties, the employment relationships governed by the collective bargaining agreement, and the practices of the construction industry; less restrictive rules of evidence; and less formal procedures. The Parties also recognize that class and representative action procedures are designed to afford a mechanism of relief for claims for which the costs of litigation are disproportionate to the available relief and that this grievance procedure addresses the same concerns by providing an expedited mechanism at reduced cost to address such claims without the need for class or representative action procedures. It is therefore the intent of the parties that this grievance procedure provide a mechanism for resolving the individual claims covered herein which balances expedited and complete relief to employees for violations with avoidance of unnecessary costs and disproportionate remedies associated with class and representative actions.

#### Arbitration of Employment Related Claims.

Any dispute, complaint or grievance alleging a violation of the Southwest Interior/Exterior Master Agreement shall be processed through the procedure for settlement of grievance and disputes in Article VIII, and the Local Union and Union shall retain sole and exclusive ability to bring such a grievance to arbitration pursuant to such Article. In addition, any dispute, complaint or grievance concerning a violation of, or arising under, Industrial Welfare Commission Wage Order 16 ("Wage Order 16") which is subject to the procedure for settlement of grievance and disputes in Article VIII by operation of Wage Order 16 and

exemptions contained therein for employees covered by collective bargaining agreements shall remain subject only to Article VIII and not this Appendix C. Disputes, complaints or grievances within the scope of this paragraph shall be referred to as "Contractual Disputes".

In addition to Contractual Disputes that may be brought by the Union or Local Union as described above, all employee disputes concerning violations of, or arising under Wage Order 16 (except as noted in the immediately preceding paragraph), the California Labor Code Sections identified in California Labor Code section 2699.5 as amended, the California Private Attorneys General Act (Labor Code section 2698, et seq.), and federal, state and local law concerning wage-hour requirements, wage payment and meal or rest



periods, including claims arising under the Fair Labor Standards Act (hereinafter "Statutory Dispute" or "Statutory Disputes") shall be subject to and must be processed by the employee pursuant to the procedures set forth in this Appendix C as the sole and exclusive remedy. To ensure disputes are subject to this grievance procedure in accordance with the intended scope of coverage set forth herein, Statutory Disputes also include any contract, tort or common law claim concerning the matters addressed in the foregoing laws (other than a claim of violation of the Southwest Interior/Exterior Master Agreement which are deemed Contractual Disputes). This Appendix shall not apply to claims before the National Labor Relations Board, the Employee Equal Opportunity Commission, the Department of Fair Employment and Housing, and the California Division of Workers' Compensation.

#### Procedure for Arbitration of Disputes.

No Statutory Dispute subject to this Appendix C shall be recognized unless called to the attention of and, in the event it is not resolved, confirmed in writing by the individual employee to the individual Contractor and the Local Union within the later of (i) the time set forth in the procedure for settlement of grievance and disputes in Article VIII or (ii) the time provided for under applicable statute.

Grievances and arbitrations of all Statutory Disputes shall be brought by the individual employee in an individual capacity only and not as a grievant or class member in any purported class or representative grievance or arbitration proceeding. The Arbitrator shall have the authority to consolidate individual grievances for hearing, but shall not have the authority to fashion a proceeding as a class or collective action or to award relief to a group or class of employees in one grievance or arbitration proceeding.

If the individual employee dispute is a Statutory Dispute subject to this Appendix C, the grievance shall not be heard by the Joint Adjustment Board, but shall proceed directly to an independent Arbitrator. In such cases, the procedures for selection of an Arbitrator contained in Article VIII shall not apply; instead, the individual employee and the Contractor shall proceed to arbitration pursuant and subject to the American Arbitration Association National Rules for Employment

Disputes. The Contractor shall pay all fees and costs related to the services of the American Arbitration Association and the services of the Arbitrator; however, the Arbitrator may reallocate such fees and costs in the arbitration award, giving due consideration to the individual employee's ability to pay. Each party shall pay for its own costs, expenses, and attorneys' fees, if any. However, if any party prevails on a statutory claim which affords the prevailing party costs or attorneys' fees, the Arbitrator may award costs and reasonable attorneys' fee to the prevailing party. Any issue regarding the payment of fees or costs, and any disputes about the manner of proceeding shall be decided by the Arbitrator selected. The Local Union or Union shall not be a party to such, and shall bear no costs or fees of the arbitration.

The Arbitrator shall have full authority to fashion such remedies and award relief consistent with limitations under federal and state law, and precedent established thereunder, whether by way of damages or the award of attorneys' fees and other costs, orders to cease and desist, or any and all other reasonable remedies designed to correct any violation which the Arbitrator may have found to have existed, including such remedies as provided under applicable state or federal law or regulation. The decision

of the Arbitrator is final and binding upon the parties and is enforceable in a court of competent jurisdiction.

The Arbitrator shall not have any authority to award relief that would require amendment of the Southwest Interior/Exterior Master Agreement or other agreement(s) between the Union and a Contractor or the Contractors, or which conflicts with any provision of any collective bargaining agreement or such other agreement(s). Any arbitration outcome shall have no precedential value with respect to the interpretation of the Southwest Interior/Exterior Master Agreement or other agreement(s) between the Union and a Contractor or the Contractors.

The parties agree to review this Appendix on a regular basis and as the law evolves, engage in good faith discussions to consider modifications to maintain its effectiveness.

3. The following language shall be added as Article XII Section 12:

**Pre-Hire Training.** The Carpenter Joint Apprenticeship Training Committee shall implement a two (2) day pre-hire apprentice training evaluation program that shall be mandatory for new apprentices to complete before commencing work for an Employer. The program shall include safety and tool recognition training, as well as, drug testing performed by the Carpenter Joint Apprenticeship Training Committee.

4. All relevant sections of the Agreement shall be revised to reflect the following:

Effective July 1, 2018, 1st and 2nd period apprentices indentured on or after July 1, 2018 shall be designated into the Southwest Carpenters' bronze health and welfare plan (the current 7/1/17 contribution rate is \$3.50/hour, and the future hourly contribution rate shall be subject to the allocation made by the Union). 1st and 2nd period apprentices indentured prior to July 1, 2018 shall be grandfathered and designated into the Southwest Carpenters' gold health and welfare plan (the current 7/1/17 contribution rate is \$7.10/hour, and the future hourly contribution rate shall be subject to the allocation made by the Union).

5. All relevant sections of the Agreement shall be revised to reflect the following:

Effective July 1, 2018, the Union shall establish a graduated pension system for apprentices indentured on or after July 1, 2018. 1st, 2nd and 3rd period apprentices shall receive no hourly pension contribution; 4th period apprentices shall receive the pension contribution hourly rate to earn a \$25 annual credit (the current 7/1/17 contribution rate is \$1.00/hour, and the future hourly contribution rate shall be subject to the allocation made by the Union); 5th and 6th period apprentices shall receive the pension contribution hourly rate to earn a \$50 annual credit (the current 7/1/17 contribution rate is \$2.00/hour, and the future hourly contribution rate shall be subject to the allocation made by the Union); and 7th and 8th period apprentices shall receive the contribution to earn a \$75 annual credit (the current 7/1/17 contribution rate is \$3.00/hour, and the future hourly contribution rate shall be subject to the allocation made by the Union). 4th, 5th, 6th, 7th, and 8th period apprentices indentured prior to July 1, 2018 shall be grandfathered and designated into the current pension contribution



schedule (the current 7/1/17 contribution rate is \$4.91/hour, and the future hourly contribution rate shall be subject to the allocation made by the Union.

6. The parties have agreed to the following increases to the total economic package for the eleven (11) Southern California Counties:

|              |        |
|--------------|--------|
| July 1, 2016 | \$2.05 |
| July 1, 2017 | \$2.05 |
| July 1, 2018 | \$2.25 |
| July 1, 2019 | \$2.30 |
| July 1, 2020 | \$2.00 |
| July 1, 2021 | \$2.00 |

7. The parties have agreed to the following increases to the total economic package for San Diego County:

|              |        |
|--------------|--------|
| July 1, 2016 | \$2.05 |
| July 1, 2017 | \$2.05 |
| July 1, 2018 | \$3.00 |
| July 1, 2019 | \$3.00 |
| July 1, 2020 | \$2.00 |
| July 1, 2021 | \$2.00 |

8. All other terms and conditions of the 2016-2020 Agreement by and between the parties shall remain unchanged.

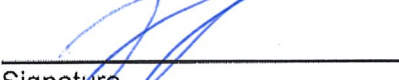
Dated: 5/15/, 2018

**WESTERN WALL & CEILING  
CONTRACTORS ASSOCIATION, INC.**

  
Signature

ALBERT CARRILLO  
Name

**SOUTHWEST REGIONAL  
COUNCIL OF CARPENTERS**

  
Signature

James Fegan  
Name

## **MEMORANDUM OF UNDERSTANDING**

The Southwest Regional Council of Carpenters and its affiliated local unions (“Union”), on the one hand, and the Western Wall & Ceiling Contractors Association, Inc., on the other hand, are parties (hereinafter “Parties”) to a Master Labor Agreement (“Agreement”) that will expire on June 30, 2022. The Parties to this Agreement hereby agree to amend it with respect to the following Recitals and Resolutions in this Memorandum of Understanding (“MOU”) for the purpose of availing themselves of the exemption that the Private Attorney Generals Act, in particular Labor Code § 2699.6, extends to collectively-bargained contractors in the construction industry.

### **RECITALS**

**WHEREAS**, Governor Jerry Brown signed Assembly Bill 1654 (“AB 1654”) on September 19, 2018, which added Section 2699.6 to the Labor Code;

**WHEREAS**, AB 1654 exempts from the coverage of the Private Attorney Generals Act (Part 13 of Division 2 of the Labor Code (commencing with Section 2698)) (“PAGA”) any “employee in the construction industry,” as that term is defined by Labor Code § 2699.6(d), with respect to work performed under a valid collective bargaining agreement that meets the requirements of AB 1654, in particular, Labor Code § 2699.6(a) (“Exemption”);

**WHEREAS**, the application of that Exemption requires satisfaction of certain conditions set forth in Labor Code § 2699.6(a)(1)-(3), which mandates that a collective bargaining agreement such as this Agreement contain wages, hours of work, and working conditions of employees, premium wage rates for all overtime hours worked, and for the employee to receive a regular hourly pay rate of not less than 30 percent more than the state minimum wage rate and the following provisions:

- (1) Prohibits all of the violations of the Labor Code that would be redressable pursuant to PAGA, and provides for a grievance and binding arbitration procedure to redress those violations.
- (2) Expressly waives the requirements of PAGA in clear and unambiguous terms.
- (3) Authorizes the arbitrator to award any and all remedies otherwise available under the Labor Code, provided that nothing in this section authorizes the award of penalties under this part that would be payable to the Labor and Workforce Development Agency.

**WHEREAS**, Article VIII of this Agreement contains provisions authorizing the filing of a grievance which can be pursued to final and binding arbitration (“Grievance / Arbitration Machinery”);

**WHEREAS**, the Parties wish to avail themselves of this Exemption by agreeing to the terms of this MOU;

**WHEREAS**, all Recitals shall be deemed Resolutions and all Resolutions shall be deemed Recitals.

## **RESOLUTIONS**

**WHEREFORE**, the parties clearly and unambiguously waive the provisions of PAGA, and agree that none of the provisions of PAGA shall apply to any of the employees covered by this Agreement;

**WHEREFORE**, the parties agree that the Union may file a grievance pursuant to this Agreement's Grievance / Arbitration Machinery and such a grievance can assert violations of the Labor Code that are redressable by PAGA, which include those sections enumerated in Labor Code §§ 2699.5 and 2699(f) and any others to ensure application of the Exemption;

**WHEREFORE**, an arbitrator presiding over an arbitration conducted pursuant to the Grievance / Arbitration Machinery shall have the authority to make an award of any all remedies otherwise available under the Labor Code except for an award of penalties that would be payable to the Labor and Workforce Development Agency, and that any Labor Code violations asserted by the Union that are redressable by PAGA will be deemed violations of this Agreement if so found by the arbitrator;

**WHEREFORE**, the parties agree that the terms of this MOU meet all conditions for application of the Exemption in AB 1654.

**WESTERN WALL & CEILING  
CONTRACTORS ASSOCIATION,  
INC.**

By: Albert Carillo

Print Name: Albert Carillo

Title: Chief Executive Officer

Dated: June 6, 2019

**SOUTHWEST REGIONAL  
COUNCIL OF CARPENTERS**

By: Stephen Araiza

Print Name: Stephen Araiza

Title: Contract Administrator

Dated: June 10, 2019