



# BAY AREA PAINTERS AND TAPERS

## PENSION AND ANNUITY TRUST FUNDS

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### BAY AREA PAINTERS AND TAPERS PENSION TRUST FUND PENSION PLAN AND ANNUITY PLAN ALUMNI SUBSCRIPTION AGREEMENT

*Dated: January 2017 and replaces all undated and earlier versions*

This Agreement is subject to prior approval of the Board of Trustees, or its agent, before contributions are accepted.

#### (1) Contribution Obligation

Effective \_\_\_\_\_, the undersigned Employer agrees to contribute to the Plans checked below on behalf of its Full-Time Alumni. An Employer may elect to contribute on of all or some of its Alumni. Employer will contribute to following Plans:

\_\_\_\_\_ Bay Area Painters and Tapers Pension Plan

\_\_\_\_\_ Bay Area Painters and Tapers Annuity Plan

#### (2) Definition of Full Time Alumni

(a) The term "Full-Time" refers to persons who work for the undersigned Employer as employees, at least an average of 30 hours per week at the location of the Employer, and earn at least the minimum wage.

(b) The term "Alumni" has the same definition for purposes of this Agreement as it does in the Plans, as may be amended from time to time.

#### (3) Administrative Requirements

(a) In applying for inclusion in the Plans, the Employer must furnish a complete list of all participating Full-Time Alumni to be covered to the Plan Administration Office.

(b) All Alumni complete an enrollment card.

(c) The Employer warrants it is a corporation.

#### (4) Collective Bargaining Agreement

The Employer warrants that it has a collective bargaining agreement with District Council 16 of the International Union of Painters and Allied Trades, requiring contributions the Plan on behalf of journeymen Painters and/or Tapers.

#### (5) Contribution Rate

The Employer agrees to pay the Plans the same hourly contribution rate for Alumni as it pays for

journeymen Painters or Tapers, provided that an Alumni must be paid for a minimum of 30 hours per week and a maximum of 40 hours per week.

(6) **Due Date for Contributions**

Contributions for Alumni shall be due at the same time as contributions the under the Collective bargaining agreement described in paragraph (4).

(7) **Hours of Service**

Hours of Service performed by Alumni after the effective date of this Subscription Agreement will be treated as Hours of Covered Service for all purposes of the Plan in accordance with the following rules:

- a. An Alumni who performed service for the Employer, both as collectively bargained employee and as non- collectively bargained employee, during a Plan Year will be treated as a collectively bargained employee for the entire Plan Year if at least half of the Alumni's Hours of Service during the Plan Year were performed as collectively bargained employee.
- b. An Alumni who was a collectively bargained employee during a Plan Year (or treated as such under other provisions of this Agreement with respect to all of his Hours of Service during a Plan Year) will be treated as a collectively bargained employee with respect to all his Hours of Service for the duration of the collective bargaining agreement in effect during Plan Year, or if later, until the end of the following Plan Year.
- c. An Alumni who was treated as a collectively bargained employee under Subparagraph (b) above, will be treated as a collectively bargained employee thereafter, providing the Alumni is performing services for the Employer. This subparagraph (c) will not apply if the Trustees of the Plan determine that more than 5% of the employees covered by Plan are non-collectively bargained employees.

(8) **Incorporation of Trust Agreements and Plan Documents**

The Employer agrees to be bound by all the terms and provisions of Trust Agreement establishing the Plan, and the Plan Document, as each of these may from time to time be amended. The Employer specifically agrees to be bound by the various provisions which set forth the obligations of contributing Employers, impose liquidated damages with respect to delinquent payment of contributions, authorize the Plan to recover attorneys' fees and costs of suit for enforcing the Plan Document or Trust Agreement, and require the Employer to submit to an audit request of the Trust.

(9) **Incorrect Contributions**

If contributions are made under this Agreement on behalf a person who is not a Full-Time Alumni, a Plan will not be obligated to pay any benefits on behalf of such person. If benefits are paid on behalf of such a person, a Plan shall be entitled to receive back from the Employer all payments made by the Plan less contributions paid by the Employer, immediately upon written demand to the Employer.

(10) **Termination of Coverage Due to Delinquencies**

If the Employer is delinquent for two consecutive months, on behalf of collectively bargained employees or Alumni, the Employer will terminate from the Plan with respect to all of its Alumni, and will not be allowed to contribute to Plan again on behalf of its

Alumni without the written approval of the Plan's trustees.

(11) **Term of this Agreement**

This Agreement shall continue in force as to each Plan so long as the Employer has a collective bargaining agreement requiring contributions to the Plan on behalf of bargaining unit employees, and applicable labor law requires continued contributions to Plan on behalf of bargaining unit employees after expiration of such a collective bargaining agreement.

This Agreement will automatically terminate with respect to the Plan when (a) the employer is no longer under an obligation to contribute to the Plan for bargaining unit employees, or (b) the Plan notifies the Employer that its participation under this Agreement is no longer permitted under or Plan rules.

Although this Agreement is meant to be a permanent arrangement for the provision of pension benefits, all parties to it reserve the right to terminate this Agreement for any reason as of the end of any month upon 30 days written notice.

(12) **Attorney's Fees**

If the Plan initiates legal action to enforce any terms of this Agreement, the Employer agrees to pay all reasonable attorneys' fees and costs incurred in such action.

(13) **Finality of Agreement**

This subscription Agreement constitutes the complete agreement between the parties with respect to Employer's participation in the Plan on behalf of its Alumni. There are no verbal agreements with respect to such participation, and in no event will any alleged verbal agreements be enforceable.

(14) **General Release**

The Employer is aware of certain cases indicating that participation of supervisory personnel or owners may not be permissible under the Taft-Hartley Act and the Employee Retirement Income Security Act (ERISA), which if true might prevent benefits being paid on their behalf by the Plan. In light of the above,

- a. The Employer agrees that the Plan, its Trustees or other people representing them, nor any union representative nor any management representative has warranted that the participation of its supervisory employees is permissible under Taft-Hartley Act or ERISA.
- b. The Employer has consulted with its own Legal Counsel to the extent it deems it advisable as to the propriety of its participation pursuant to this Agreement, including its eligibility to use the IRS alumni participation rules.
- c. If the Employer's participation in the Plan on behalf of certain employees is determined not to be permissible under any law or is subject to adverse tax consequences, the Employer hereby waives any right to sue the Plan, the Plan's trustees, any union representative or any management representative, or any of their agents or representatives, for any damages arising therefrom of every nature and kind, known or unknown, suspected or unsuspected, and agrees that all rights granted under any state or federal law or regulation limiting the effect of this waiver, including but not limited to Section 1542 of the California Civil Code are hereby expressly waived. Said Section

1542 of the California Civil Code reads as follows:

*"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."*

(15) **Non-Discrimination Testing**

Because the retirement plans must conduct employer-by-employer non-discrimination testing for participants who are non-collectively bargaining employees, the Employers agrees to supply the Trust Fund with any and all information necessary for the Trust Fund to conduct the required testing. Failure to provide such information will cause the Trust Fund to cancel this Agreement.

**EMPLOYER:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Titled: \_\_\_\_\_

Dated: \_\_\_\_\_

**BAY AREA PAINTERS AND TAPERS  
PENSION  
TRUST FUND:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Titled: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Titled: \_\_\_\_\_

Dated: \_\_\_\_\_

**BAY ARE PAINTERS & TAPERS ALUMNI**  
**ENROLLMENT FORM**

Name of Alumni: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

Current Employer: \_\_\_\_\_

Last Worked Covered by Collective Bargaining Agreement: \_\_\_\_\_

Employer: \_\_\_\_\_

Dates: \_\_\_\_\_

Alumni Signature: \_\_\_\_\_

Date: \_\_\_\_\_