

## DISTRICT COUNCIL 16 NORTHERN CALIFORNIA

### HEALTH AND WELFARE TRUST FUND

#### SUBSCRIBER AGREEMENT

#### FOR NON-BARGAINED EMPLOYEES

This Subscriber Agreement (“Agreement”) is entered into by and between District Council 16 Northern California Health and Welfare Trust Fund (“Fund”) and \_\_\_\_\_ (“Employer”) upon the terms and conditions set forth herein.

1. The Subscriber Agreement is subject to prior approval of the Board of Trustees before contributions are accepted and benefits are payable.
2. The Board of Trustees has the right to change the Subscriber Agreement and its contents, including the contribution rate and the benefits provided, by giving the Employer a 30 day written notice.
3. This Subscriber Agreement may be terminated at any time by the Employer or the Fund by providing 60 days written notice to Employer and participants.

#### ARTICLE 1 - DEFINITIONS

1. **Collective Bargaining Agreement.** Refers to the Collective Bargaining Agreement between the Employer and District Council 16, International Union of Painters and Allied Trades (“Union”).
2. **Contribution Rate.** The amount payable to the Fund by the Employer as a flat-rate for benefits received. The rate shall be set by the Board of Trustees.
3. **Due Date.** The Due Date is the date on which payment is due from the Employer. Payment is due on the 15<sup>th</sup> day of the month for all Full-time Employees on the payroll who were employed for at least the required number of hours during the previous month. Payments are considered delinquent if not received by the Fund by the last day of the month.
4. **Signatory Employers.** Refers to Employers who are signatory to a Collective Bargaining Agreement with the Union, and who employ bargained employees.
5. **Non-Bargained Employees.** Refers to employees not covered by a Collective Bargaining Agreement with the Union.
6. **Full-time Employee.** Refers to employees who are regularly scheduled to work at least 30 hours per week. Sole proprietors, partners, or managing officers of an incorporated business

may participate if they are employed on a Full-time basis as defined in this paragraph; and if any participate under this Subscriber Agreement then all must participate.

7. **Trust Agreement.** Refers to the Trust Agreement establishing the District Council 16 Northern California Health and Welfare Trust, as amended from time to time.
8. **Plan Documents.** Refers to the written documents, insurance policies, HMO policies, evidence of coverage and Summary Plan Description setting forth the District Council 16 Northern California Health and Welfare Plan, as they may be amended from time to time.
9. **Board of Trustees.** Refers to the Board of Trustees established by the Trust Agreement.

## **ARTICLE 2 – TRUST FUND**

1. The undersigned Employer agrees to contribute to the Fund on behalf of all of its Full-time Non-Bargained Employees who work at facilities at which one or more bargaining unit employees covered by a Collective Bargaining Agreement are also employed, even if the Full-time Non-Bargained Employee has health coverage through another source subject to Article 5. All such Full-time Non-Bargained Employees are listed on Exhibit A, which is to be completed by the Employer and submitted to the Fund Office on an annual basis. The employer must arrange for each Full-time Non-Bargained Employee to complete Exhibit C upon initial enrollment under this Agreement.
2. The Employer agrees to be bound by all the terms and provisions of the Trust Agreement and the Plan Documents, 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, and authorize the Fund to recover attorneys' fees for enforcing the Plan Documents or Trust Agreement.

## **ARTICLE 3 – PAYMENT OF CONTRIBUTIONS**

1. **Contribution Rate.** The Employer agrees to pay the monthly contribution rate as set by the Board of Trustees for each employee covered by this Subscriber Agreement. The Board of Trustees shall be entitled to adjust this monthly contribution rate, provided that thirty (30) days written notice is provided to the Employer.
2. **Contribution Due Date.** Contributions that will provide the first month's coverage shall be due immediately upon the execution of this agreement. Contributions for each subsequent month must be received by the Fund no later than the last day of each month. Each month's contributions provide coverage for the following month. This paragraph is subject to the Initial and Continued Eligibility for Benefits requirements set forth in Paragraph 2(a) of Article 4.
3. **Contribution Self-Pay.** An employee covered under this Subscriber Agreement shall not have any right to self-pay the monthly contribution, other than as required under COBRA.

4. **Contributions On Ineligible Persons.** If contributions are made under this Subscriber Agreement on behalf of any person who is not a Full-Time Non-Bargained Employee, the Fund will not be obligated to pay any benefits on behalf of such person or that person's dependents.

If benefits are paid on behalf of such an ineligible person or dependents, the Fund shall be entitled to receive back from the Employer and such ineligible person or dependent all benefit payments made by the Fund less contributions paid by the Employer, immediately upon written demand to the Employer and such ineligible person or dependent.

5. **Uniform Contribution Payment Procedures.** An Employer may require each Non-bargained Employee covered under this Subscriber Agreement to pay, through payroll deduction, all or part of the contribution required for that Non-bargained Employee. If the Employer elects this option, the payment requirement shall be applied uniformly to all Non-bargained Employees covered under this Subscriber Agreement. The Employer's election to use the payroll deduction option shall not relieve the Employer of its obligation to pay the entire contribution rate required under this Subscriber Agreement.
6. **Renewal.** The Fund reserves the right to change the terms of this Subscriber Agreement, the contribution rate, and the benefits provided, at any time upon 30 days written notice to the Employer and the Employer agrees to such changes unless the Employer terminates this Subscriber Agreement in accordance with Article 6, herein.

#### **ARTICLE 4 – ELIGIBILITY REQUIREMENTS FOR COVERAGE**

1. **Participation for Employers with Non-Bargained Employees.** The following Full-time Non-Bargained Employees are eligible to participate in the Fund if all conditions are met below:
  - (a) Full-time Non-bargained Employees of Signatory Employers.
  - (b) One or more bargained employees must be hired by the Employer on a regular basis. Employers receiving coverage for their Non-Bargaining Unit Employees for the first time are not required to employ bargaining unit employees for the first two calendar years of their participation. Thereafter, the Employer must cover at least one bargaining unit employee who has had at least 870 hours contributed on his behalf to one of the multi-employer pension plans affiliated with District Council 16 or International Union of Painters and Allied Trades (IUPAT) during the previous twelve (12) months. However, if an Employer utilizes the services of no more than two (2) Working Employers at least one of whom performs work covered by the Collective Bargaining Agreement on a Full-Time basis, as described, above, and if such work is permitted in the Employer's applicable Collective Bargaining Agreement, then the Employer shall not be required to hire one or more bargained employees in order to be eligible for coverage under this Subscriber Agreement, provided all other conditions are met.
  - (c) If the Employer wishes to cover any Full-time Non-Bargained Employees, the Employer must cover all of its Full-time Non-Bargained Employees working in the same facility at which one or more bargaining unit employees who are covered by a Collective Bargaining

Agreement are also employed in the geographic jurisdiction of the Union. Eligible Non-Bargained Employees are not permitted to decline coverage.

- (d) An Employer may execute a Subscriber Agreement covering Full-time Non-Bargaining Employees only at the following times:

(1) Newly Signatory Employers

A newly signatory Employer may execute a Subscriber Agreement either (i) within 90 days from the date the Employer first becomes signatory to a Collective Bargaining Agreement with the Union, or (ii) when the Employer renews its Collective Bargaining Agreement with the Union.

(2) Already Signatory Employers

An Employer already signatory to a Collective Bargaining Agreement with the Union may execute a Subscriber Agreement either (i) when the Employer renews its Collective Bargaining Agreement with the Union, or (ii) at any time if the Employer provided medical coverage to its Non-Bargaining Employees for at least the six (6) consecutive months immediately preceding the effective date of the Subscriber Agreement.

(3) Terminated Employers

An Employer whose Subscriber Agreement coverage was terminated, for any reason, may again execute a Subscriber Agreement either (i) upon renewal of its Collective Bargaining Agreement with the Union, or (ii) three (3) years after the date that the Employer's Subscriber Agreement coverage terminated, whichever date is later.

2. **Coverage Rules.** Coverage for Full-time Non-Bargained Employees shall be subject to the following coverage rules:

- (a) Initial and Continued Eligibility for Benefits. A newly hired Full-time Non-Bargained Employee will be eligible for benefits under the Plan on the first day of the month following a waiting period of sixty (60) days in which the employee works the minimum number of hours required under this Subscriber Agreement. For each employee, whether newly hired or previously hired, coverage will be provided for a month only if the Employer has paid contributions for that employee for that month. The Employer does not have the option of excluding probationary or temporary employees if they regularly work at least 30 hours per week.

Eligible employees are not permitted to decline coverage.

A lag month will exist between the employee's work month and the month of eligibility provided by that month of work. For example, an employee who works sufficient hours in June will have an employer contribution made on his behalf in July, which provides coverage for claims incurred in August.

## **ARTICLE 5 – EMPLOYEES EXCLUDED UNDER THIS SUBSCRIBER AGREEMENT**

Under this Subscriber Agreement, no contributions are required for, and no coverage will be provided to, any employees of the Employer within the following categories:

1. Employees who are covered by a bona fide collective bargaining agreement with the Union or with another union which provides for health coverage for such employees.
2. Any employees of the Employer who work outside the geographic jurisdiction of the Union.
3. Employees who do not work at the same facility at which one or more bargaining unit employees are also employed.

## **ARTICLE 6 – COMMENCEMENT, TERMINATION CONDITIONS, AND COBRA**

The Fund or the Employer has the right to terminate this Agreement by giving the other party a 60 day written notice. Other commencement and termination conditions are listed below:

1. Commencement Date of Coverage for New Employees. Coverage under this Subscriber Agreement for newly hired employees shall commence on the first day of the month following a waiting period of sixty (60) days in which the employee is regularly scheduled to work 30 hours per week as required under this Subscriber Agreement. Each flat-rate contribution provides only a single month of eligibility. If the employee loses eligibility for benefits due to a COBRA qualifying event, the employee may extend coverage by paying the full premium under COBRA. See “COBRA: Temporary Continuation of Health Care Coverage” of the Summary Plan Description (SPD) for more information.
2. Termination of Coverage Due to Contribution Delinquencies. If an Employer is delinquent in its contributions to the Fund on behalf of employees covered by this Subscriber Agreement, coverage shall terminate on the first day of the second month following the month in which the last contribution was made. For example, if the Employer made the last contribution in August for work performed in the month of July, the employee’s coverage will terminate on the first day of October. No benefits shall be payable with respect to any month unless the contributions for that month have been received. Termination under this paragraph will not provide COBRA continuation eligibility.
3. Termination of Coverage Due to Bargaining Unit Delinquencies. Coverage under this Subscriber Agreement will not be provided if the Employer is delinquent in making contributions to the Fund with respect to the Employer’s employees covered by the Collective Bargaining Agreement with the Union. Such termination on the basis that the Employer is delinquent will be made by the Board of Trustees or its designated Committee. Termination under this paragraph will not provide COBRA continuation eligibility. The term “contributions” includes liquidated damages, interest, attorney’s fees, and audit fees.
4. No Contributions Permitted if Delinquent on Payments for Collectively Bargained Employees. For covered Non-Bargained Employees, contributions may not be made for any month, if at the beginning of that month, contributions are delinquent on behalf of employees working under the

applicable Collective Bargaining Agreement between the Employer and the Union. Contributions for an employee covered under the Subscription Agreement made by an Employer who is delinquent on contributions for bargained employees will be applied to the contributions due for the covered collectively bargained employees. No coverage will be provided under this Subscription Agreement without a timely employer contribution.

5. Termination Due to Termination of Collective Bargaining Agreement. If the Collective Bargaining Agreement expires or is not extended under applicable Federal law, this Subscription Agreement will not continue thereafter unless the Collective Bargaining Agreement has been renewed by that time. Termination under this paragraph will not provide COBRA continuation eligibility.
6. Termination Date of Coverage. Coverage shall terminate on the first day of the second month following the month in which the last contribution was made. For example, if the employer made the last contribution in August for work performed in the month of July, the employee's coverage will terminate on the first day of October.
7. Termination Due To Absence of Bargained Employees. After the Employer's second calendar year of participation, coverage shall cease if the Employer does not, on a regular basis, hire one or more employees covered by a Collective Bargaining Agreement with the Union and has not paid contributions on behalf of at least one bargaining unit employee who has had at least 870 hours contributed on his behalf to one of the multi-employer pension plans affiliated with District Council 16 or IUPAT during the previous twelve (12) months, unless the exception for Working Employers applies. Termination under this paragraph will not provide COBRA continuation eligibility.
8. Coverage Lost Immediately. Coverage shall cease as of the date that the Trustees determine the Employer utilized a non-union company to perform work covered by the Employer's Collective Bargaining Agreement. Termination under this paragraph will not provide COBRA continuation eligibility.
9. Immediate Termination by Trustees. If the undersigned Employer should fail to comply with its obligations under the Subscription Agreement, the Trustees may immediately terminate the undersigned's participation in the Plan on behalf of employees covered by this Agreement. These include, but are not limited to, reporting ineligible persons or failing to report all eligible Full-Time Non-Bargained Employees (Article 1, Section 6), or improperly declining coverage for Full-Time Non-Bargained Employees (Article 4, Section 1(a)). Termination under this paragraph will not provide COBRA continuation eligibility.

## **ARTICLE 7 – OTHER CONDITIONS**

1. Attorneys' Fees. The Fund is entitled to reasonable attorneys' fees and costs incurred in litigation to enforce the terms of this Subscriber Agreement, if the Fund prevails in the litigation.
2. Integration Clause. This writing constitutes the final expression of the parties' agreement concerning the matters covered by this Subscriber Agreement and is intended to be a complete and exclusive statement of the terms of the Subscriber Agreement.

3. Employer Audit. The Fund reserves the right to audit the Employer at any time throughout the year. The audit will require, but is not limited to, the Employer to provide: hours worked by each non-bargained employee, proof of business relationship, signatory status, flat-rate contribution payments and adjustments, and eligibility terminations and additions process.
4. Cooperation with Fund. Employer agrees to fully cooperate with the Fund and complete such forms and furnish such information as may be deemed necessary by the Trustees or their designee.
5. Limits on Benefits. Benefits shall include medical benefits, only, consisting of medical, prescription drug, dental, vision, mental health and substance abuse. Benefits shall not include accrual of a bank of hours, or, reciprocity, nor shall such employees be eligible for subsidized “self-pay” continuation coverage. There is no right of self-payment other than COBRA.
6. Employer Attestation. The Employer must review and complete Exhibit B upon entering into this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Subscriber Agreement to be executed by affixing the signatures of duly authorized officers.

Fund: District Council 16 Northern California  
Health and Welfare Trust Fund

\_\_\_\_\_  
\_\_\_\_\_  
Name of Employer

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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