



Bay Area Painters and Tapers
Pension and Annuity Trust Funds
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BAY AREA PAINTERS AND TAPERS
PENSION PLAN AND ANNUITY PLAN

ALUMNI SUBSCRIPTION AGREEMENT

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 identified in Exhibit A. An Employer may elect to contribute on **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

The Employer must review and complete *Exhibit B* upon entering into this Agreement.

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

The term "Full-Time" refers to persons who are regularly scheduled to 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.

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, as follows:

“An “Alumni” is a Non-Bargained Employee who benefits under the Plan and is treated as a Collectively Bargained Employee for purposes of meeting federal rules on minimum participation and anti-discrimination. To be an Alumni, the employee must have accrued a benefit under this Plan while being a Collectively Bargained Employee, must be employed by an Employer having a Collective Bargaining Agreement requiring contributions to this Plan, or the Union or the Plan and must participate in the Plan pursuant to a written subscription agreement which provides for the employee to benefit under the Plan.”

(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 under this Subscription Agreement must complete an enrollment card.

(c) The Employer warrants it is a corporation.

(d) The Plans reserve 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 Alumni, proof of business relationship, signatory status, scope of work, wages, salary, or other compensation.

(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 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 in accordance with the following Plan 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 treated as a collectively bargained

employee with respect to all his Hours Service for the duration of the collective bargaining agreement in effect during the 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 the 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, 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) Attorneys' 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.

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.

(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 Employer agrees to supply the Plan with any and all information necessary for the Plan to conduct the required testing. Failure to provide such information will cause the Plan to cancel this Agreement.

EMPLOYER:

By: _____

Name: _____

Titled: _____

Dated: _____

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

By: _____

Name: _____

Titled: _____

Dated: _____

By: _____

Name: _____

Titled: _____

Dated: _____

EXHIBIT A

**BAY AREA PAINTERS & TAPERS
TRUST FUND**

**ALUMNI ENROLLMENT FORM
UNDER SUBSCRIBER
AGREEMENT**

Name of Employer under Subscriber: _____

Alumni's Social Security Number: _____

Last Date Covered by Collective Bargaining Agreement (CBA): _____

Name of CBA Contributing Employer: _____

Type of Work Performed for CBA Employer: _____

Alumni Signature:

Date:

EXHIBIT B

**BAY AREA PAINTERS & TAPERS
TRUST FUND**

**FAQ AND ATTESTATION OF EMPLOYER OBLIGATIONS UNDER
ALUMNI SUBSCRIBER AGREEMENT**

The Bay Area Painters & Tapers Pension Plan and Annuity Plan (“Plan” or “Plans”) allows signatory employers to contribute on behalf of their non-bargaining unit employees through a subscriber agreement (“Subscriber Agreement”). Your business has agreed to contribute on behalf of its non-bargaining unit employees in accordance with the Subscriber Agreement.

(1) Who is an eligible Alumni? See Subscriber Agreement, Sections 1-2.

An Alumni is a non-bargained employee who accrued a benefit under the Plan while formerly a Collectively Bargained Employee. Contributions may be made to the Plan on behalf of Full-Time Alumni who are regularly scheduled to work 30 hours per week. You are not required to contribute on behalf of all of your Alumni employees. You must maintain a Collective Bargaining Agreement requiring contributions to this Plan.

(2) Can friends, family members, and others who are not Full-Time Alumni be reported to the Plan? No. See Subscriber Agreement, Sections 1-2.

If an Alumni is regularly scheduled to work an average of less than 30 hours per week then that Alumni cannot be reported to the Fund under *any* circumstances. Persons who are not employees, such as family members or friends, cannot be reported under the Subscriber Agreement.

(3) Can an Employer be terminated from participation under the Subscriber Agreement? Yes.

An Employer may be terminated from participation if it reports contributions on behalf of persons under this Subscriber Agreement who are not Full-Time Alumni. Subscriber Agreement, Section 9.

An Employer may be immediately terminated from participation under the Subscriber Agreement if it is delinquent for two consecutive months on behalf of collectively bargained employees or Alumni. Subscriber Agreement, Section 10.

The Subscriber Agreement will automatically terminate if the Employer no longer has an obligation to contribute to the Plan for bargaining unit employees. Subscriber Agreement, Section 11.

The Subscriber Agreement may also be terminated upon 30-day written notice by the Employer or the Plan. Subscriber Agreement, Section 11.

Even if the Subscriber Agreement is terminated, the Employer’s obligations under its respective collective bargaining agreement(s) applicable to a painter, taper, glazier or floor coverer will remain.

(5) Is the Employer obligated to maintain adequate records? Yes. See Subscriber Agreement, Section 3(d).

The Employer is required to maintain adequate records that show hours worked by each Alumni, proof of the employee's business relationship or title, scope of work, wages, salary, or other compensation.

How to Take Corrective Action

If you are reporting ineligible persons or not reporting all full-time non-bargained employees, you should immediately provide relevant information by contacting:

Bay Area Painters & Tapers Trust Fund
c/o Coleen Christophersen, HS&BA
4160 Dublin Blvd., Suite 400
Dublin, CA 94568-7756

Employer Attestation

On behalf of the Employer named below, I hereby attest and warrant that the Employee(s) listed in Exhibit A are Alumni as defined in the Subscriber Agreement between the Employer and the Plan.

I further attest that I have reviewed and am familiar with the various participation requirements set forth in the Subscriber Agreement and FAQ, including, but not limited to, the following: contribution requirements, due date, audit, definition of Alumni, renewal and termination.

I understand that the Plan relies upon these representations and the Employer shall be liable for any misrepresentations with respect to the provisions of the Subscriber Agreement.

I certify that I am a responsible officer or owner of the above-referenced Employer and am authorized to make this Employer Attestation.

[Name of Employer]

[Date]

[Print Name & Title]

[Signature]