

## BAY AREA PAINTERS AND TAPERS PENSION PLAN

### SUBSCRIBER AGREEMENT COVERING NON-BARGAINED EMPLOYEES

This Subscriber Agreement (“Agreement”) is entered into by and between Bay Area Painters and Tapers Pension Plan (“Plan”) and \_\_\_\_\_ (“Employer”) upon the following terms and conditions.

1. The Subscriber Agreement is intended to document and memorialize the current and prior participation of Employer.
2. The Board of Trustees has the right to change the Agreement and its contents, including the contribution rate and the benefits provided, by giving the Employer at least 30 days written notice.
3. This Agreement may be terminated at any time by the Employer or the Plan by providing 90 days written notice.
4. Employer elects to participate in the following plans established under the Trust Agreement:

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

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

#### ARTICLE 1 - DEFINITIONS

1. **Effective Date.** This Agreement continues existing participation and shall be effective on the date it is signed.
2. **Contribution Rate.** The amount payable to the Pension Plan and/or Annuity Plan by the Employer at an hourly rate for the hours worked by a Full-time Non-Bargained Employee. The rate shall be set by the Board of Trustees. Contributions cannot be made in excess of 50 hours per week.
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 the Employer’s Full-time Non-Bargained Employees. Payments are considered delinquent if not received by the Plan by the 25<sup>th</sup> day of the month.
4. **Non-Bargained Employee.** Refers to the Employer’s employee who is not covered by a collective bargaining agreement with the District Council 16, International Union of Painters and Allied Trades (“Union”).

5. **Full-time Non-Bargained Employee.** Refers to employees who are regularly scheduled to work at least 19 hours per week (or 1000 hours per year) in the geographic jurisdiction of the Union. In accordance with Section 1.14 of the Pension Plan the term “Employee” does not include any self-employed person, whether a sole proprietor or a partner.
6. **Trust Agreement.** Refers to the Trust Agreement establishing the Bay Area Painters and Tapers Pension Trust Fund and/or Bay Area Painters and Tapers Annuity Plan as amended from time to time.
7. **Plan Document.** Refers to the document setting forth the Bay Area Painters and Tapers Pension Plan and/or Bay Area Painters and Tapers Annuity Plan as amended from time to time.
8. **Board of Trustees.** Refers to the Board of Trustees established by the Trust Agreement.

## **ARTICLE 2 – TRUST FUND**

1. Employer agrees to contribute to the Plan on behalf of all of its eligible Full-time Non-Bargained Employees.
2. The Employer agrees to be bound by all the terms and provisions of the relevant Trust Agreement 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, and authorize the Plan to recover attorneys' fees for enforcing the Plan Document or Trust Agreement.

## **ARTICLE 3 – CONTRIBUTIONS AND RENEWAL**

### **1. Contribution Rate.**

The Employer agrees to pay the hourly contribution rate set by the Board of Trustees for the employee(s) covered by this Subscriber Agreement as set forth in *Exhibit A*. The Board of Trustees shall be entitled to adjust this hourly contribution rate, provided that thirty (30) days written notice is provided to the Employer.

### **2. Contribution Due Date.**

Contributions shall be due by the Due Date for hours worked in the prior month.

3. **Contributions for Ineligible Persons.** If contributions are made under this Subscriber Agreement on behalf of any person who is not a Full-time Non-Bargained Employee as defined by this Subscriber Agreement, the Plan will not be obligated to pay any benefits on behalf of such person.

If benefits are paid on behalf of such a person or such person's beneficiaries, the Plan shall be entitled to receive from the Employer all payments made by the Plan less contributions paid by the Employer, plus an administrative fee of ten per cent (10%) of the net amount, immediately upon written demand to the Employer.

Contributions made by mistake shall be subject to the Plan's Policy on Mistaken Contributions.

4. **Renewal.** This Subscriber Agreement shall renew annually unless either party provides the other with 90 days written notice of its intent not to renew the agreement.

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

If the Employer wishes to cover any Full-time Non- Bargained Employee, the Employer must cover all of its Full-time Non-Bargained Employees under the Plan who are not covered by a collective bargaining agreement. Full-time Non-Bargained Employees are not permitted to decline participation under this Plan unless they are covered by a subscriber agreement with another multi-employer plan affiliated with the Union or the International Union of Painters and Allied Trades.

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

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

Under this Subscriber Agreement, no contributions are required for, and no benefits will be provided to, any employees of the Employer that are covered by a collective bargaining agreement.

#### **ARTICLE 6 – TERMINATION CONDITIONS**

The Plan or the Employer has the right to terminate this Subscriber Agreement by giving the other party a 90 day written notice. If the Employer should fail to comply with its obligations under this Subscriber Agreement, the Board of Trustees may immediately terminate the Employer's participation in the Plan on behalf of employees covered by this Agreement.

#### **ARTICLE 7 – OTHER CONDITIONS**

1. **Employer Audit.** The Plan 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 on each covered Non-Bargained Employee, proof of business relationship, and eligibility

terminations and additions process.

2. 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.
3. Non-Discrimination Testing. 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 testing and take correction action as required by law. Failure to provide such information will cause the Plan to cancel this Agreement.
4. Attorneys' Fees. The Plan is entitled to reasonable attorneys' fees and costs incurred in litigation to enforce the terms of this Subscriber Agreement, if the Plan prevails in the litigation.
5. 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.

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

Plan: Bay Area Painters and Tapers  
Pension Plan

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

Title: Chairman

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

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

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

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

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

Title: Co- Chairman

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

**EXHIBIT A**

**BAY AREA PAINTERS AND TAPERS TRUST FUND**

**SUBSCRIBER AGREEMENT COVERING NON-BARGAINED EMPLOYEES**

**Employer's Name:**

**Employer #:**

**Billing #:**

**Date:**

**Contribution Will Start On:**

<b>Employee Name</b>	<b>Annuity Plan Rate</b>	<b>Pension Plan Contribution Rate (\$ / hr)</b>

*Note: Employer must complete Exhibit A and submit it to the Fund Office on an annual basis.*

## EXHIBIT B

### BAY AREA PAINTERS & TAPERS TRUST FUND

#### FAQ AND EMPLOYER ATTESTATION UNDER NON-BARGAINING UNIT SUBSCRIBER AGREEMENT

The Bay Area Painters and Tapers Pension Plan and Annuity Plan (“Plans” 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) Do all full-time employees have to be reported to the Plan? Yes. See Subscriber Agreement, Art. 1(5), Art. 4.**

Contributions must be made to the Plan on behalf of all full-time employees who are regularly scheduled to work at least 19 hours per week (or 1000 hours per year) and are in the geographic jurisdiction of the Union. Self-employed persons, whether a sole proprietor or partner, are not eligible to participate in the Plan because they are not considered employees.

**(2) Can friends, family members, and others who are not full-time employees be reported to the Plan? No. See Subscriber Agreement, Art. 1(5), Art. 4.**

If an employee is regularly scheduled to work less than 19 hours per week (or 1000 hours per year) then that employee cannot be reported to the Plan under *any* circumstances. Persons who are not employees, such as family members or friends, cannot be reported.

**(3) Do non-bargained full-time employees have to be reported to the Plan even if they have coverage from another retirement plan? Yes, unless one of the exceptions (c)-(e) below apply. See Subscriber Agreement, Art. 4.**

You are prohibited from reporting only on behalf of owners, principals, executives or management level employees if you have other full-time non-bargained employees. You are obligated to report on behalf of *all* non-bargained full-time employees even if any of the following occur:

- (a) You employ both a bargained employee as a painter, taper, glazier or floor coverer, as well as his or her spouse as a full-time non-bargained employee.
- (b) You employ both a bargained employee as a painter, taper, glazier or floor coverer as well as his or her child a full-time non-bargained employee.

In each of the above (a)-(b) situations, contributions must be made on behalf of the full-time non-bargained employee unless one of these exceptions applies:

Exceptions:

- (c) Employees who are covered by a collective bargaining agreement with another union which provides participation in a retirement plan.
- (d) Employees who work outside the geographic jurisdiction of District Council 16.
- (e) Employees who are covered by a subscriber agreement with another multi-employer plan affiliated with District Council 16 or the International Union of Painters and Allied Trades. Subscriber Agreement, Art. 4.

**(4) Can an Employer be terminated from participation under the Subscriber Agreement? Yes. See Subscriber Agreement, Art. 6 and Art. 7(3).**

An Employer may be immediately terminated from participation under the Subscriber Agreement if it violates certain provisions, including, but not limited to reporting ineligible persons or failing to report all full-time non-bargained employees, or failing to provide information required to conduct non-discrimination testing.

The Subscriber Agreement may also be terminated upon 90-day written notice by the Employer or the Plan.

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) Are you obligated to maintain adequate records? Yes. See Subscriber Agreement, Art. 7, Section 1.**

You are required to maintain adequate records that show hours worked by each non-bargained employee, 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 Employees listed in Exhibit A are Full-time Non-bargained Employees 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 Full-time Non-bargained Employee, requirement that all Full-time Non-bargained Employees working in the geographic jurisdiction of District Council 16 are required to participate (no Employee opt-out), 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]