

COPY

**MASTER AGREEMENT BETWEEN
CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT
AND
INDEPENDENT ROOFING CONTRACTORS OF CALIFORNIA**

This Agreement is made and entered into this 28 day of June, 2010 (hereinafter referred to as the **Effective Date**) by and between the CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT (hereinafter the **District**) and INDEPENDENT ROOFING CONTRACTORS OF CALIFORNIA, (hereinafter the **Program Sponsor**) for the purpose of providing Related and Supplemental Instruction and other services to apprentices registered in the ROOFING APPRENTICESHIP PROGRAM (hereinafter the **Program**).

In consideration of the covenants, conditions and stipulations hereinafter expressed and in consideration of the mutual benefits to be derived from them, the parties agree as follows:

I. Definitions.

- A. "Apprentice" means a person at least eighteen years of age who has entered into a written Agreement complying with Labor Code Section 3078 and who is registered in the **Program**.
- B. "Related and Supplemental Instruction" means instruction that is related to or supplements the training an apprentice receives through employment in the trade, craft, or business in which he or she is apprenticed. The instruction may be made available through classroom instruction, distance learning, or any other means approved by the **District**.

II. Provisions of Related and Supplemental Instruction.

- A. The **District** shall approve all curriculums in accordance with standard procedure for Related and Supplemental Instruction (RSI) of apprentices in the **Program**. No course of instruction or other element of the curriculum shall become effective until approved by the **District**.
- B. For purposes of this Agreement, all instructors must meet the **District's** published minimum level of qualifications for faculty, whether they are provided by the **District** or the **Program Sponsor**. Instructors who do not meet the minimum level of qualifications will need to be approved by the **District's** Equivalency Committee. Those instructors not approved may not be utilized for instruction of this program. Should the **Program Sponsor** provide the instructor, the **Program Sponsor** agrees to supervise and pay these instructors.
- C. The **Program Sponsor** shall not unlawfully refuse to enroll an apprentice in any course or otherwise impermissibly discriminate against an apprentice on account of sex, ancestry, age, marital status, race, religious creed, mental disability, medical condition (including HIV and AIDS), color, national origin, physical disability, family or sexual preference status and other similar factors in compliance with Title IX, Sections 503 and 504 of the Rehabilitation Act.



- D. The **Program Sponsor** shall be responsible for keeping all attendance records of the apprentices enrolled and shall provide the **District** with any and all information and data in the **Program Sponsor's** possession that is reasonable and necessary to enable the **District** to comply with its attendance reporting obligations and other responsibilities.
- E. The **District** agrees to submit the program of Related and Supplemental Instruction to California Community College Chancellor's Office for approval and to establish eligibility for RSI funds.

III. Facilities, Equipment, Supplies, and Instructionally Related Services.

- A. **Program Sponsor** shall obtain and provide without charge to the **District** adequate, clean, and safe classrooms and other instructional facilities and equipment necessary to provide Related and Supplemental Instruction via classroom locations other than the Chabot College campus, or through distance education, if approved.
- B. The **Program Sponsor** shall permit the **District** to inspect any facility used in providing Related and Supplemental Instruction under this Agreement during regular business hours.
- C. The **Program Sponsor** shall provide all supplies and materials needed for the Related and Supplemental Instruction, including but not limited to instruction delivered via face to face instruction or distance learning methods, other than what the **District** expressly agrees to provide.

IV. General Provisions

- A. The initial term of this Agreement shall commence on the **Effective Date** and end on June 30, 2011. Thereafter, it shall be deemed automatically renewed for one (1) year period. Changes to the Agreement may be initiated by either party, and must be submitted in writing to the other party. The parties to the Agreement must mutually agree to any change.

Either Party shall have the right to cancel and terminate this Agreement without cause or penalty upon thirty (30) day's written notice to the other. Upon the effective date of such termination, all rights and obligations of the parties hereunder shall cease and terminate except that the **Program Sponsor** and **District** shall each perform fully any obligations under this Agreement relating to an event occurring or circumstances existing prior to the date of termination. Furthermore, if a notice of termination is given and the thirty (30) days expires during an instructional sequence, such termination shall not affect students currently assigned to the **Program Sponsor** as apprentices and the termination shall become effective at the end of that instructional sequence, unless otherwise mutually determined and agreed to by the Parties hereto.

- B. This Agreement and the rights and duties hereunder shall not be assigned in whole or in part without the written consent of both parties.



- C. Both parties to this Agreement shall provide equal opportunity in all areas of employment practice and assure that there shall be no discrimination against any person on the basis of sex, ancestry, age, marital status, race, religious creed, mental disability, medical condition (including HIV and AIDS), color, national origin, physical disability, family or sexual preference status and other similar factors in compliance with Title IX, Sections 503 and 504 of the Rehabilitation Act, other federal and state non-discrimination regulations, and its own statements of philosophy of objectives. Furthermore, the **Program Sponsor** shall at all times during the life of this Agreement remain in compliance with the State of California Plan for Equal Opportunity in Apprenticeship, and the parties shall cooperate in any appropriate efforts taken to meet the goals and timetables of the Division of Apprenticeship Standards under the plan.
- D. The **Program Sponsor** shall, after reasonable notice, provide the **District** with any and all information and data in the **Program Sponsor's** possession that is reasonably necessary to enable the **District** to comply with its reporting obligations and other responsibilities under the Civil Right's Act of 1964, the Education Amendments of 1972, Article 9.5 (commencing with Section 11 135) of Chapter One of Part I of Division 3 of Title 2 of the California Government Code or any other federal or state law requiring non-discrimination in employment or in any program receiving federal or state financial assistance.
- E. Each party agrees to be responsible for any damage to property or persons to the extent caused by or resulting from its or its agents, officers or employees actions, errors, or negligence in connection with the activities described in this Agreement.
- F. Pursuant to Education Code Section 78249(a), the **District** shall maintain worker's compensation insurance while participating in Related and Supplemental Instruction (RSI). **Program Sponsor** shall maintain worker's compensation insurance for injuries sustained by an apprentice while at a **Program Sponsor** training site. **Program Sponsor** shall provide at least twenty-five (25) days prior written notice to school of any substantial change or cancellation of said coverage. **Program Sponsor** shall notify the **District** immediately upon becoming aware that any apprentice is no longer employed or has been temporarily or permanently terminated from any employment arranged by or through **Program Sponsor**. Furthermore, every apprentice Agreement or contract arranged or facilitated by **Program Sponsor** involving an apprentice shall have a clause that requires the apprentice employer to notify **Program Sponsor** immediately upon temporarily or permanently terminating the employment of any apprentice, or upon the resignation of any apprentice from the employment of the apprentice's employer.
- G. Upon the demand of any party, any dispute concerning the parties' duties or liabilities shall be resolved by binding arbitration in accordance with the terms of this Agreement. Arbitration proceedings shall be administered by the American Arbitration Association (AAA) or such other administrator as the parties shall mutually agree upon in accordance with the AAA Commercial Arbitration Rules. The arbitration shall be conducted at a location in Alameda County, California selected by the AAA or other administrator. All statutes of limitation applicable under California law to any dispute shall apply to any arbitration proceeding. All discovery activities shall be expressly limited to matters directly relevant to the dispute being

arbitrated. Judgment upon any award rendered in arbitration may be entered in any court having jurisdiction.

If any action or litigation, including arbitration, is commenced between the parties concerning this Agreement or the rights and duties of either party under it, the prevailing party in the litigation shall, in addition to such other relief as may be granted, be entitled to a reasonable sum for attorney's fees incurred in the litigation, which shall be determined by the court in the litigation or in a separate action brought for that purpose.

- H. Subject to the **Program Sponsor's** concurrence, the Chairperson of the Apprenticeship Training Committee, or his/her designee, the Vice Chancellor of Business Services, and the Executive Director of Economic Development and Contract Education at the Chabot-Las Positas Community College District, or their designees, may formalize operational details of this Agreement by letter.
- I. The **Program Sponsor** and the **District** agree to mutually develop an annual operating budget in accordance with the terms of this Agreement which must be approved by the **Program Sponsor** and **District** staff prior to June 15 each year for the following fiscal year (July 1 through June 30). This proposed budget for the ensuing fiscal year will be presented to the **District** governing board in accordance with the **District's** budget development requirements. A draft budget is attached as Exhibit A.
- J. The **Program Sponsor's** instructors will teach apprentices in closed classes.
- K. At the end of the **District's** fiscal year (July 1 – June 30), an end-of-year reconciliation will be conducted. If the amount of revenue generated pursuant to the provisions of the statutes of the State of California is less than the amounts necessary to support the expenditures mutually agreed upon between the parties to this Agreement, the **Program Sponsor** will provide to the **District** that difference when invoiced. If the amount of revenue generated pursuant to the provisions of the statutes of the State of California is more than the amounts necessary to support the expenditures mutually agreed upon between the parties to this Agreement, the **District** will provide to the **Program Sponsor** that difference. Funds paid to the **Program Sponsor** through this Agreement are for the reimbursement of expenditures made by the **Program Sponsor** in support of Related and Supplemental Instruction, the operation and maintenance of its training programs and/or center(s) and expenditures for equipment, tools, supplies and materials.
- L. Should any article, section or sub section of this Agreement be found to be unlawful due to any federal, state or municipal law or regulation said article section or sub section shall be modified, amended or deleted to comply with the controlling federal, state or municipal law or regulation.
- M. All written notices, reports or other written communications under this Agreement shall be deemed to be properly given when deposited in the United States mail, postage prepaid, addressed as follows:
 - (a) Notice to District:

Lorenzo S. Legaspi
Vice Chancellor
Business Services
Chabot-Las Positas
Community College District
5020 Franklin Drive
Pleasanton, CA 94588

Julia A. Dozier
Executive Director
Economic Development and Contract Education
Chabot-Las Positas
Community College District
7600 Dublin, Blvd, Suite 102
Dublin, CA 94568

(b) Notice to Program Sponsor:

John Upshaw
Program Director
Independent Roofing Contractors of California
7041 Koll Center Parkway, Suite 265
Pleasanton, CA 94566

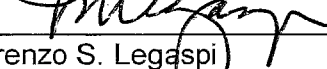
- N. **Program Sponsor** is an independent contractor, and not an employee, agent or partner of, or joint venture with the **District**. Nothing in this Agreement is intended to nor shall it be construed as creating the relationship of agent, servant, employee, partnership, joint venture, or association. As an independent contractor, **Program Sponsor** will be solely responsible for determining the means and methods for performing the services described herein. **Program Sponsor** shall further be responsible for deducting all federal, state and local income taxes, FICA and other charges, if any, to be deducted from the compensation of **Program Sponsor's** employees. The **District** shall make no state or federal unemployment insurance or disability insurance contributions on behalf of **Program Sponsor** and/or its employees. Each and every person providing services to the **District** under this Agreement shall, at all times, remain an employee of **Program Sponsor**, unless otherwise employed by the **District** prior to the execution of this Agreement. **Program Sponsor's** employees shall not, at any time, or in any way, be entitled to sick leave, vacations, retirement, or other fringe benefits from the **District**, nor shall they be entitled to overtime pay from the **District**. **Program Sponsor** and/or its employees shall not be included in the classified or faculty service, have no property rights to any position, and have none of the rights an employee of the **District** may otherwise have in the event of termination of this Agreement. Thus the **District** shall not exercise control over the methods by which **Program Sponsor** performs services covered by the Agreement. The interests and responsibilities of the **District** are to ensure the end result that such services are performed in accordance with the standards set forth in this Agreement.
- O. This Agreement shall inure to the benefit of and shall be binding on the parties hereto, their successors and assigns, except as otherwise provided in this Agreement.
- P. Unless otherwise set forth herein, nothing contained herein is intended nor shall be construed to create rights running to the benefit of third parties.
- Q. This Agreement has been negotiated at arm's length, and the parties have participated fully in the review and revision of this Agreement. Accordingly, any rule

of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities to be resolved against the drafting party shall not apply in interpreting this Agreement, and is hereby waived.

- R. Each of the signatories to this Agreement represent that they have the authority to execute this Agreement and to bind the party on whose behalf their execution is made.
- S. Typographical and clerical errors are subject to correction.
- T. This Agreement and any accompanying documents attached hereto represent the parties' complete understanding with regard to the subject matter of this Agreement, and shall supersede all prior written or oral Agreements or understandings with respect thereto. A waiver of any of the provisions of this Agreement shall not constitute a waiver of any other provision nor shall it constitute a continuing waiver, unless said waiver is in writing and signed by the party granting the waiver.
- U. The provisions of this Agreement are severable and if any provision of this Agreement is held or declared to be illegal, invalid, or unenforceable, such illegal, invalid, or unenforceable provision will not affect any other provision hereof, and the remainder of this Agreement, disregarding such invalid portion, will continue in full force and effect as though such void provision had not been contained therein.
- V. The headings are inserted into this Agreement for reference and convenience only, and will not affect the meaning or interpretation of any provision hereof.
- W. This Agreement may be executed in counterparts, each of which will be an original and which together will constitute one and the same instrument. A photocopy of the executed Agreement may be used as if it were the original Agreement.

IN WITNESS WHEREOF the parties here have executed this Agreement the day and year written above.

CHABOT-LAS POSITAS COMMUNITY
COLLEGE DISTRICT on behalf of
CHABOT COLLEGE

By: 
Lorenzo S. Legaspi
Vice Chancellor, Business Services
Chabot-Las Positas Community
College District

Date: 8/23/10

INDEPENDENT ROOFING CONTRACTORS OF
CALIFORNIA

By: 
John Upshaw
Program Director
Independent Roofing Contractors of
California

Date: June 28, 2010

Exhibit A
Independent Roofing Contractors of California
Roofing Apprenticeship Program
Proposed Training Budget
Full Program Year
July 1, 2010-June 30, 2011

Estimated Enrollment Data

* 510 students x 20.25 hours x 100% attendance = 10,327.5 hours
(Fall and Spring sessions)

Estimated Income

10,327.5 hours x \$ 5.06 = **\$52,257.15 ****

Estimated Budget Expenditures

Direct Costs for Instructors and Instructor Aides \$0.00

Administrative Costs

- Instructional Administration 6,012.26
- Admissions and Records (\$25.30/yr per student) 12,903.00
- Non-Instructional Administration (18% of RSI) 9,406.29

Subtotal 28,231.55

Total Expenditures **\$28,231.55**

Estimated Payment by District to Program Sponsor = \$23,935.60

- * Based on estimated 510 apprentices attending for two terms
Hours based on 100% attendance (with makeup classes)

**** Receipt of Related and Supplemental Instruction dollars based on availability and actual monies received**

