

**MASTER AGREEMENT BETWEEN
CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT
AND
ASSOCIATED BUILDERS & CONTRACTORS
OF SAN DIEGO, INC.
APPRENTICESHIP & TRAINING TRUST FUND**

This agreement is made and entered into this 16th day of May, 2016 (hereinafter referred to as the **Effective Date**) by and between the CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT (hereinafter the **District**) and the Associated Builders & Contractors of San Diego, Inc. (hereinafter ABC of San Diego, Inc.) Apprenticeship & Training Trust Fund (ABC of San Diego, Inc. is the administrator for the Apprenticeship & Training Trust Fund, an ERISA trust) (hereinafter the **Program Sponsor**) for the purpose of providing Related and Supplemental Instruction and other services to apprentices registered in the in the ABC of San Diego, Inc. 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. "District" means the institution through which Chabot College offers class credit, as administered through the Economic Development and Contract Education department.
- C. "Program Sponsor" means the independent contracting firm which sponsors the apprenticeship oversight program.
- D. "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 curricula 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 curricula 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. As set forth herein, instructors provided by the **Program Sponsor** are not employees of the **District**.

- 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 (RSI) 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.
- 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, 201~~1~~. Thereafter, it shall be deemed automatically renewed for one (1) year periods for up to a total of five years. Changes to the Agreement may be initiated by either party, and must be submitted in writing to the other party at least forty-five (45) days prior to expiration of the original or renewed one-year term of this Agreement. 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 one hundred twenty (120) 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 one hundred twenty (120)

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 Rights 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 for any injuries sustained by unemployed Apprentices while in RSI classes or while traveling to or from the RSI training site. **Program Sponsor** shall provide notice to the **District** via regular reports on the status of Apprentices who are on temporary layoff or who have been permanently terminated from the program. Furthermore, all participating employers are required to immediately advise the **Program Sponsor** of any changes in employment status of an Apprentice.
- G. Pursuant to California Labor Code §3700, the **Program Sponsor** shall secure Workers' Compensation Insurance for its employees engaged in the Work of the Contract. The **Program Sponsor** shall sign and deliver to the **District** the following certificate prior to performing any of the Work under the Contract:

"I am aware of the provisions of §3700 of the California Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code and I will comply with such provisions before commencing the performance of the Work of the Contract."

The form of such Certificate is included hereto as Attachment A.

- H. 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 proceeding, which shall be determined by the Arbitrator pursuant to California law following issuance of the decision. The award of attorney's fees by the Arbitrator shall be final and binding.

- I. In accordance with California Government Code §§8350 et seq., the Drug Free Workplace Act of 1990, **Program Sponsor** will be required to execute a Drug Free Workplace Certificate concurrently with execution of the Agreement. The **Program Sponsor** will be required to implement and take the affirmative measures outlined in the Drug Free Workplace Certificate and in California Government Code §§8350 et seq. Failure of the **Program Sponsor** to comply with the measures outlined in the Drug Free Workplace Certificate and in California Government Code §§8350 et seq. may result in penalties, including without limitation, the termination of the Agreement, the suspension of any payment of monies otherwise due under this Agreement.

The form of such Certificate is included hereto as Attachment B.

- J. Subject to the **Program Sponsor's** concurrence, the Executive Director of the **Program Sponsor**, or his/her designee, the Vice Chancellor of Business Services, and the District Executive Director of Economic Development and Contract Education at the **District**, or their designees, may formalize operational details of this Agreement by letter.

K. The **Program Sponsor's** instructors will teach apprentices in closed classes.

- L. 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.

RSI funds for this apprenticeship program are contingent on the transfer of funding from the *Program Sponsor's* previous Local Educational Agency, San Diego City College. *District* will work with State of California to assist with that transfer of funds and subsequent distribution to *Program Sponsor* as appropriate.

The *District* shall expend for or allocate to the apprenticeship classes offered under this agreement all funds accrued by the *District* from the attendance of apprentices in those classes, with the exception of fifteen percent (15%) which shall be withheld by the *District* for administrative expenses (see example in Exhibit A).

Program Sponsor will be responsible for and invoiced for administrative expenses on an annual basis at the end of the *District's* fiscal year, June 30th. Administrative expenses will be equal to fifteen percent (15%) of the RSI monies that would have been earned by *Program Sponsor* and due to the *District* regardless of whether the State of California's RSI funding is fully allocated or not.

- M. 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 or Section or Sub Section shall be modified, amended or deleted to comply with the controlling Federal, State or Municipal law or regulation.
- N. 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
7600 Dublin, Blvd, Suite 300
Dublin, CA 94568

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

(b) Notice to *Program Sponsor*:

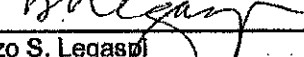
Tracey Barrett
Director of Education
Associated Builders & Contractors of San Diego, Inc. Apprenticeship & Training Trust
13825 Kirkham Way
Poway, California 92064

- O. **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 in accordance with State law. **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. Unless otherwise specified herein, 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 in that such services are performed in accordance with the standards set forth in this Agreement and the laws of the State of California.
- P. 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.
- Q. Unless otherwise set forth herein, nothing contained herein is intended nor shall be construed to create rights running to the benefit of third parties.
- R. 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.
- S. 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.
- T. Typographical and clerical errors are subject to correction.
- U. 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.
- V. 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.

- W. The headings are inserted into this Agreement for reference and convenience only, and will not affect the meaning or interpretation of any provision hereof.
- X. 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: 2-22-16

ASSOCIATED BUILDERS & CONTRACTORS
OF SAN DIEGO APPRENTICESHIP & TRAINING
TRUST

By: 
Sherry J. Yarbrough, Executive Director

Date: 2/4/16

EXHIBIT A

Training Budget

Calculating Administrative Expenses

Number of apprentices x classroom hours x \$5.46 (mandated hourly rate¹) = RSI monies for Program

15% of RSI monies for Program = Administrative Expenses

RSI monies for Program – Administrative Expenses = RSI monies to Program Sponsor

Example:

175 (apprentices) x 72 (classroom hours each) x \$5.46¹ = \$68,796.00 (RSI monies)

\$68,796.00 x 15% = \$10,319.40² (Administrative Expenses)

\$68,796.00 - \$10,319.40 = \$58,576.60³ (RSI to Program Sponsor)

Notes:

1. Although the legislated reimbursement amount is currently \$5.46 per apprentice, per classroom hour, there is no guarantee that the *District* will be reimbursed at the full amount.
2. Administrative Expenses are due to *District* each year, regardless of whether RSI monies from State of California have been issued or not.
3. RSI funds for this apprenticeship program are contingent on the transfer of funding from the Program Sponsor's previous Local Educational Agency, San Diego City College, to District. District will work with State of California to assist with that transfer of funds and subsequent distribution to Program Sponsor as appropriate.

ATTACHMENT A

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

I, Sherry J. Yarbrough, the Executive Director of Associated Builders & Contractors of San Diego Apprenticeship & Training Trust, declare, state and certify that:

1. I am aware that California Labor Code '3700(a) and (b) provides:

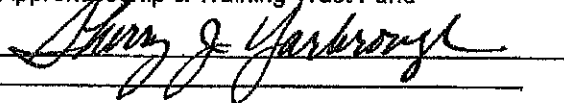
"Every employer except the state shall secure the payment of compensation in one or more of the following ways:

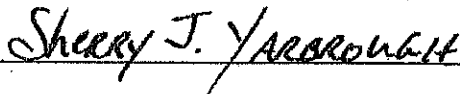
- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees."

2. I am aware that the provisions of California Labor Code '3700 require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of this Contract.

Associated Builders & Contractors of San Diego, Inc.
Apprenticeship & Training Trust Fund

by:





ATTACHMENT B

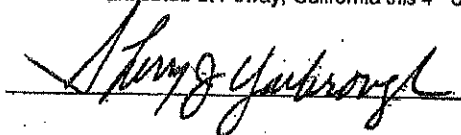
DRUG-FREE WORKPLACE CERTIFICATION

I, Sherry J. Yarbrough, am the Executive Director of Associated Builders & Contractors of San Diego, Inc. Apprenticeship & Training Trust. I declare, state and certify to all of the following:

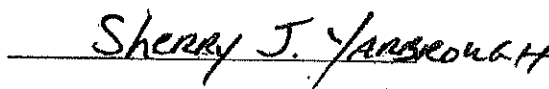
1. I am aware of the provisions and requirements of California Government Code §§8350 et seq., the Drug Free Workplace Act of 1990.
2. I am authorized to certify, and do certify, on behalf of Contractor that a drug free workplace will be provided by Contractor by doing all of the following:
 - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in Contractor's workplace and specifying actions which will be taken against employees for violation of the prohibition;
 - B. Establishing a drug-free awareness program to inform employees about all of the following:
 - (i) The dangers of drug abuse in the workplace;
 - (ii) Contractor's policy of maintaining a drug-free workplace;
 - (iii) The availability of drug counseling, rehabilitation and employee-assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations;
 - C. Requiring that each employee engaged in the performance of the Contract be given a copy of the statement required by subdivision (A), above, and that as a condition of employment by Contractor in connection with the Work of the Contract, the employee agrees to abide by the terms of the statement.
3. Contractor agrees to fulfill and discharge all of Contractor's obligations under the terms and requirements of California Government Code §8355 by, inter alia, publishing a statement notifying employees concerning: (a) the prohibition of any controlled substance in the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the Work of the Contract be given a copy of the statement required by California Government Code §8355(a) and requiring that the employee agree to abide by the terms of that statement.
4. Contractor and I understand that if the District determines that Contractor has either: (a) made a false certification herein, or (b) violated this certification by failing to carry out and to implement the requirements of California Government Code §§8355, the Contract awarded herein is subject to termination, suspension of payments, or both. Contractor and I further understand that, should Contractor violate the terms of the Drug-Free Workplace Act of 1990, Contractor may be subject to debarment in accordance with the provisions of California Government Code §§8350, et seq.
5. Contractor and I acknowledge that Contractor and I are aware of the provisions of California Government Code §§8350, et seq. and hereby certify that Contractor and I will adhere to, fulfill, satisfy and discharge all provisions of and obligations under the Drug-Free Workplace Act of 1990.

I declare under penalty of perjury under the laws of the State of California that all of the foregoing is true and correct.

Executed at Poway, California this 4th day of February, 2016.



Signature



Typed or Printed name