

MEMORANDUM OF UNDERSTANDING
between
CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT'S
OSHA TRAINING CENTER
and the
OCCUPATIONAL SAFETY COUNCILS OF AMERICA

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into as of this _____ day of _____, 2015, by and between the CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT'S OSHA TRAINING CENTER, (hereinafter referred to as CLPCCD OTC) having its principle place of business located at 7600 Dublin Boulevard, Suite 102, Dublin, CA 94568, and the OCCUPATIONAL SAFETY COUNCILS OF AMERICA (hereafter referred to as OSCA), having its principle place of business located at 455 East Carson Plaza Drive, Carson, CA 90746.

WHEREAS, CLPCCD OTC has been certified by the United States Occupational Safety and Health Administration to be an OSHA Training Institute Education Center (OTIEC), and is authorized under a contract to the Department of Labor Office of Training and Education (OTE), to provide high quality, standards-based OSHA Certified Training courses (Courses) and other safety training within that territorial and administrative area known as OSHA's Region IX; and

WHEREAS, CLPCCD OTC conducts OSHA-related training activities in cooperation with colleges and other entities throughout Region IX as a part of CLPCCD OTC's OSHA-certified training program (Program); and

WHEREAS, OSCA wishes to provide such Courses as the parties may hereafter agree upon, and offer other occupational and environmental health and safety training in conjunction with CLPCCD OTC's Program that will allow the OSCA students to receive OSHA-certified training, and prospectively leading to Certification by CLPCCD OTC if they meet CLPCCD OTC's requirements;

NOW THEREFORE, it is hereby understood and agreed between the parties:

I. SCOPE AND SERVICES

CLPCCD OTC and OSCA shall work collaboratively to provide cost effective official Department of Labor/OSHA Courses and other safety-related courses through both open enrollment and under contract with third parties. OSCA desires to make these Courses available throughout its calendar year to individuals seeking to improve their knowledge of workplace safety, and to develop required safety skills within industries affected by OSHA requirements.

II. PROGRAM DIRECTOR

OSCA shall designate a Program Director to oversee and facilitate implementation of this Agreement in cooperation with other appropriate administrators within their respective organizations.

Program Director shall have the following responsibilities:

- A. To act as principle contact to plan and coordinate all activities within their respective organizations as well as with the partner organization.
- B. To ensure Course offerings and appropriate contract arrangements are in place at least fourteen (14) days prior to the Course date and have been approved by both parties.
- C. To collaborate in establishing a Course schedule each year that substantially covers the entire subsequent calendar year.
- D. To pursue and maintain excellence in course and instruction quality.

III. OSCA RESPONSIBILITIES

OSCA shall have the following responsibilities:

- A. Courses.
 1. Scheduling – Work jointly with CLPCCD OTC to build a schedule of course offerings for the population served by OSCA.
- B. Classroom.
 1. Venue – Provide a classroom at an OSCA location, on or off-site, with appropriate space, seating, lighting, and other environmental elements conducive for learning.
 2. Site Management – Provide on-site course management, working to resolve any issues that may arise while a course is being conducted.
- C. Paperwork
 1. Procure prerequisite forms and back-up documentation as necessary from students attending Courses that require them, review for qualifications, forward to CLPCCD OTC prior to the first day of the Course requiring the documentation.
 2. Maintain and deliver CLPCCD OTC and Department of Labor paperwork and to perform all the following:

- i. Administer evaluations, daily sign-in sheets, demographic surveys and other documentation as required by CLPCCD OTC for each class.
 - ii. Ensure governmental paperwork for OSHA numbered courses and CLPCCD OTC course evaluations are completed and returned to CLPCCD OTC within 24 hours after the completion of each course.
 3. Create Course statement by documenting number of participants in each Course, grant revenue, fees paid, expenses and revenue sharing, and forwarding to CLPCCD OTC within 30 days of Course completion.
- D. Faculty –Identify instructional staff and refer them to CLPCCD OTC to undergo the CLPCCD OTC faculty approval process. Only qualified, CLPCCD OTC-approved instructors may teach OSHA-numbered classes.

IV. CLPCCD OTC RESPONSIBILITIES

CLPCCD OTC shall have the following responsibilities:

A. Courses.

1. Course Scheduling – Work jointly with OSCA to build a schedule of Course offerings for the population served by OSCA.
2. Programming – Ensure that Courses are properly scheduled for future course marketing and registration.
3. Course Preparation.
 - i. Work with OSCA to source materials and standards for instruction, accreditation, and certification for Courses that originate with United States Department of Labor (DOL)/OSHA.
 - ii. Supply all course materials (handouts, books, etc.), and any other collateral materials required for OSHA-numbered Courses, unless otherwise agreed upon between both parties.
4. Documentation.
 - i. Prepare final CLPCCD OTC and DOL certifications and completion cards as appropriate.
 - ii. Provide Course documentation including evaluations, summaries and daily sign-in sheets as required by OTI and as modified from time to time.

- iii. Receive and review Course statements, working with OSCA on any discrepancies. Issue payment for profit-sharing due OSCA within 45 days of receipt of Course statements.

B. Faculty.

1. Except where otherwise agreed upon, CLPCCD OTC will be primarily responsible for recruiting and hiring instructors to teach OSHA-numbered classes provided at OSCA facilities. OSCA may propose its own instructors to teach courses to be held at OSCA facilities, subject to CLPCCD OTC's approval of their professional credentials and relevant experience, which approval shall not be unreasonably withheld.
2. Prepare and process instructor payments as appropriate for Courses taught, including issuance of IRS 1099 forms.

C. Students.

1. Registration – Provide enrollment and registration services for students enrolled in Courses.
2. Provide students with a CLPCCD OTC Certificate of Completion upon successful completion of Course.
3. Implement, maintain and provide student records to students and to others, such as potential employers, as requested by students.
4. Collect tuition and or fees.
5. Respond to student inquiries and complaints promptly, with a copy to OSCA Program Director.

D. Other.

1. Maintain quality control over the provision of official Department of Labor / OSHA-numbered Courses and the materials used in these Courses.
2. Cooperate with OSCA in the delivery of all training offered through this Agreement.
3. Perform program administration in accordance with CLPCCD OTC's standards for administrative and financial accountability and reporting.

V. COST AND PROFIT SHARING – OPEN ENROLLMENT CLASSES

- A. CLPCCD OTC shall register students and collect tuition fees for all open enrollment classes. Unless otherwise agreed upon, CLPCCD OTC is responsible for all costs, which includes but will not be limited to instructor pay, materials costs, rent, rental equipment, etc. Indirect costs for the administration of this Agreement, except as expressly provided herein is will not be considered a cost for any Course.
- B. After accounting for all expenses for a Course, CLPCCD OTC and OSCA will share the remaining revenue, each receiving 50% of the net.
- C. Profit sharing shall be calculated based on the amount collected for each class, dependent on actual monies received. Unless otherwise agreed upon, CLPCCD OTC shall send payment to OSCA or OSCA's designee within 45 days of receipt of the final Course statement each of OSCA's completed classes.
- D. Payments will be made payable to the OCCUPATIONAL SAFETY COUNCILS OF AMERICA, and sent to 455 East Carson Plaza Drive, Carson, CA 90746.
- E. Each party may use its own contracting and procurement system that it applies generally to other contracts, acquisitions, and procurements of like description in its regular business.

VI. COST AND PROFIT SHARING – GRANT-FUNDED CLASSES

- A. Grant-funded Courses will be individually priced by OSCA, in collaboration with funder. Fees shall be sufficient to cover the parties' direct out-of-pocket expenses, without regard to indirect costs to administer this Agreement, except as expressly provided herein.
- B. CLPCCD OTC will receive all student registrations as well as payments from funders.
- C. CLPCCD OTC will retain a fee of \$55.00 per student to administer the registration and tracking for students for safety programs that do not include OSHA-numbered classes. The balance of funds received for the student attending the grant-funded programs' classes will be sent to OSCA within 45 days of receipt of the Course statement.
- D. CLPCCD OTC will retain a fee of \$55.00 per student to administer the registration and tracking for students in safety programs that do include OSHA-numbered classes. However, in addition to the administrative fees (\$55.00 per student) CLPCCD OTC will retain 50% of the net revenue (after accounting for all expenses for the Course). The \$55.00 per student administrative fee due to CLPCCD OTC will be considered an expense. Other expenses include, but are not limited to: instructor salary, instructor travel costs, course material production and shipping, room rental and any other costs and expenses necessary for the delivery of the Course. The remaining 50% of the net revenue will be sent to OSCA.

- E. Payments will be made payable to the OCCUPATIONAL SAFETY COUNCILS OF AMERICA, and sent to 455 East Carson Plaza Drive, Carson, CA 90746.
- F. Each party may use its own contracting and procurement system that it applies generally to other contracts, acquisitions, and procurements of like description in its regular business.

VII. COST AND PROFIT SHARING – SPECIAL PROGRAMS

- A. Periodically OSCA and CLPCCD OTC will participate in special programs created in partnership with outside entities. Special Program Courses will be priced by OSCA, in collaboration with funder.
- B. CLPCCD OTC will receive all student registrations as well as payments from funders.
- C. CLPCCD OTC will be given a flat fee (rather than a per student or revenue sharing amount) as payment for processing the Special Program Courses. The flat fee will be agreed upon by CLPCCD OTC and OSCA and will be outlined in writing and added as an addendum to this MOU.

VIII. MUTUAL RESPONSIBILITIES.

- A. Intellectual Property.
 - 1. Each party shall provide the other with camera-ready copies of its logos and trademarks for use in their respective catalogs, flyers, and other promotional materials. The parties shall use such property solely for the purposes intended, and for no other purpose or usage.
 - 2. Each party shall provide reasonable security for such property against loss, theft or, or misappropriation.
 - 3. Upon the completion or termination of this Agreement, each party shall return to the other all unused copies of the other party's intellectual property, and any unused promotional materials bearing that party's trademark or other indicia of proprietary ownership, shall be destroyed, or disposed of in accordance with the obligated party's standard practices and procedures for handling and disposing of sensitive, and/or confidential materials.
- B. Reconciliation and final accounting.
 - 1. Upon completion or termination of this Agreement, each party shall provide the other with a financial report of revenue and expenditures showing all days of service, all direct costs incurred in providing such services, all amounts paid, and any amounts claimed as due and owing to that party.

2. At a mutually agreeable time the parties shall meet and confer, and settle all claims between them. Except as otherwise provided herein, neither party shall claim any form of General and Administrative Costs, or indirect cost of any nature.

IX. NO OBLIGATION TO THIRD PARTIES.

- A. Neither party shall be liable to any third party by reason of its performance, delay in performance, or failure to perform under this Agreement, for any loss of profits, claims against either party by any other person not a signatory hereto, or for consequential damages even if that party is advised of the possibility of such loss, claims, or damages.
- B. Neither party shall be liable to any other person for loss or destruction of nor damage to any data, equipment, or other property brought upon premises used or occupied by either party, or which may be delivered to either party by any person in connection with this Agreement. Both OSCA and CLPCCD OTC, and each of them, disclaims any and all liability for risk of loss to any and all such property.
- C. Parties' Right To Use Data.

Each party shall have unrestricted right to use for its own purposes, including publication, any data or information which it may develop in connection with or as a result of performing services described in this Agreement.

X. DISCLAIMERS.

- A. WITH RESPECT TO INFORMATION, DATA, OR MATERIALS TO BE FURNISHED TO PROSPECTIVE STUDENTS PURSUANT TO THIS AGREEMENT, OSCA AND CLPCCD OTC, AND EACH OF THEM, MAKE NO WARRANTY AS TO THE ACCURACY OF DATA OR MATERIALS FURNISHED HEREUNDER, NOR AS TO RESULTS TO BE OBTAINED FROM USING SUCH DATA OR MATERIALS FOR AN INTENDED PURPOSE OR FOR ANY PURPOSE, AND THERE ARE NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- B. WITH RESPECT TO INFORMATION, DATA, OR MATERIALS TO BE FURNISHED BY CLPCCD OTC TO OSCA TO BE USED TO PROVIDE INSTRUCTION TO OTHER PERSONS PURSUANT TO THIS AGREEMENT, OSCA WILL BE RELYING UPON INFORMATION, DATA, AND MATERIALS FURNISHED TO OSCA BY CLPCCD OTC, AND OSCA ACCEPTS NO LIABILITY THEREFOR, AND MAKES NO REPRESENTATION OR WARRANTY AS TO THE ACCURACY OF SUCH DATA OR MATERIALS SO FURNISHED, NOR AS TO RESULTS TO BE OBTAINED FROM USING SUCH DATA OR MATERIALS FOR AN INTENDED PURPOSE OR FOR ANY PURPOSE, AND THERE ARE NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT

LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS
FOR A PARTICULAR PURPOSE.

XI. TERM

This MOU shall be deemed to be effective as of the date of the last signature on this Amended Agreement. It shall remain in effect for each successive calendar year, and shall renew annually unless otherwise terminated by either party.

XII. TERMINATION AND DEFAULT

- A. Termination shall be (i) at will by either party upon 30 days written notice; or (ii) upon breach of any material term of this Agreement at the option of the non-breaching party, if the breaching party, upon 10 days written notice, cannot cure such breach.
- B. Should the contract be terminated voluntarily, both parties agree to fulfill their obligations arising prior to the termination of the contract and in which vested rights have accrued. This includes, but is not limited to, the obligation to allow enrolled students to complete Courses scheduled.
- C. Neither party shall be liable to the other for consequential damages, loss of profits or goodwill, claims against a party by any third party, even if the breaching party is advised of the possibility of such loss, claims, or damages, by reason of its performance, delay in performance, or failure to perform under this Agreement.
- D. A party's failure or forbearance to enforce that party's right under any provision of this Agreement shall not be construed or act as a waiver of said party's subsequent right to enforce any of the provisions contained herein.

XIII. INDEMNIFICATION AND INSURANCE

- A. OSCA shall defend, indemnify and hold CLPCCD OTC harmless from and against any and all liability, loss expense, attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omission of the OSCA, its officers, employees or agents.
- B. CLPCCD OTC shall defend, indemnify and hold OSCA harmless from and against any and all liability, loss expense, attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omission of the CLPCCD OTC, its officers, employees or agents.

- C. Each party agrees to carry and keep in full force and effect a policy of insurance (either self-insurance or with an insurance company licenses to do business in the State of California) against the peril of bodily injury, personal injury and property damage during the term of the agreement with a limit of at least One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in aggregate. Each party shall name the other party as an Additional Named Insured, and shall transmit to the other party a Certificate of Insurance, together with Additional Named Insured Party endorsement thereon, as soon as practicable following execution of this Agreement by both parties.

XIV. AMENDMENTS

Any changes to this Agreement after this date will be considered amendments to the original agreement and must be agreed upon by both parties in writing, unless otherwise stated.

XV. RELATIONSHIP OF THE PARTIES.

- A. The parties to this Agreement shall be and remain at all times independent contractors, neither being employee, agent, representative, co-venturer, or sponsor of the other in their relationship under this Agreement. Neither party nor any of its agents, representatives, students or employees shall be considered agents, representatives, or employees of the other party as a result of this Agreement.
- B. Any person employed by a party as an employee, and providing services to the other party under this Agreement shall, at all times, remain an employee of his or her employer. Neither party's employees shall, at any time, or in any way, be entitled to sick leave, vacations, retirement, or other fringe benefits from the other party, nor shall they be entitled to overtime pay from the other party, nor be included in any classified or faculty service of the non-employer party.

XVI. DISPUTES, JURISDICTION, AND VENUE

- A. This Agreement and all disputes hereunder, and the rights and obligations of the parties hereto, shall be governed by and construed in accordance with the laws of the State of California without reference to its conflicts or choice of law provisions.
- B. Each party obligates itself to address and resolve any and all disputes in a spirit of good faith and fair dealing, and to resolve any matter between them as quickly and cost-effectively as possible. Each party consents and agrees to participate in such mediation, conciliation, or other dispute resolution measures as may be offered, whether privately or under sponsorship of the courts. All claims, disputes and/or lawsuits in connection with this Agreement shall be brought solely within the state and federal courts sitting in the counties within the State of California in which they are principally doing business, and each party to this Agreement hereby irrevocably submits to the jurisdiction and venue of such courts. Should the parties hereafter agree to participate in conciliation,

mediation, or arbitration, all such proceeding shall be in conformity with the applicable provisions of the California Code of Civil Procedure.

XVII. GENERAL PROVISIONS

- A. Notices – All notices required to be given to CLPCCD OTC or OSCA shall be given in writing either by personal delivery, first class postage prepaid, or by certified mail, return receipt requested, or by facsimile transmission, at the following addresses or at such other address as may be designated in writing by either party.

All notices to CLPCCD OTC will be sent to:

Julia A. Dozier
District Executive Director
Economic Development & Contract Education
Chabot-Las Positas Community College District
7600 Dublin Blvd., Suite 102
Dublin, CA 94568
Phone: (925) 249-9370
Fax: (925) 249-9367
E-mail: jdozier@clpccd.org

All notices to OSCA will be sent to:

OCCUPATIONAL SAFETY COUNCILS OF AMERICA
Attn: Jason Vogel
455 East Carson Plaza Drive
Carson, CA 90746
Phone: (562) 624-2720
Fax: (310) 327-7813
E-mail: jasonv@osca.com

- B. Severability. In the event that any portion of this MOU is determined to be invalid or illegal, such invalidity or illegality shall be severed and not impair the operation or effect of any remaining portions of this MOU.
- C. Entire Agreement. This MOU constitutes the entire understanding between CLPCCD OTC and OSCA with respect to the subject matter hereof and shall supersede all prior written or oral agreements, if any, between CLPCCD OTC and OSCA with respect to the subject matter herein.
- D. Attorneys' Fees. In the event of a dispute under this Agreement, each Party shall bear its own attorneys' fees and costs.
- E. Non-Assignment. No Party shall assign this Agreement or any right or privilege any Party might have under this Agreement without the prior mutual written consent of all

Parties hereto, which consent shall not be unreasonably withheld, provided that the assignee agrees in a written notice to all Parties to carry out and observe each applicable Party's agreements hereunder. Nothing herein shall prevent or restrict the administrative reassignment by OSCA as to the performance of any contractual duty or obligation agreed to be performed by OSCA as set forth herein.

- F. Non-Liability of Officials. Each signatory hereunder is acting in his or her official capacity. No officer, member, employee, agent, or representative of either Party shall be personally liable, by reason of any action taken or withheld, or for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon, shall be personally enforced against any such officer, official, member, employee, agent, or representative.
- G. Captions. The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.
- H. Counterparts. This Agreement may be executed in any number of counterpart copies, including facsimile transmissions, all of which shall constitute one and the same Agreement and each of which shall constitute an original.

IN WITNESS WHEREOF, the parties hereto enter into this Memorandum of Understanding, duly executed on this, the _____ day of _____, 2015.

CHABOT-LAS POSITAS COMMUNITY
COLLEGE DISTRICT

OCCUPATIONAL SAFETY COUNCILS
OF AMERICA

Lorenzo S. Legaspi
Vice Chancellor, Business Services

Jason Vogel
OSCA Director of Workforce Development

Date

Date

Julia A. Dozier
District Executive Director of Economic
Development & Contract Education

Date