

**MEMORANDUM OF UNDERSTANDING**  
between  
**CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT**  
and the  
**GUAM CONTRACTORS ASSOCIATION TRADES ACADEMY**

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between Chabot-Las Positas Community College District, (hereinafter referred to as CLPCCD) having its principal place of business located at 5020 Franklin Drive, Pleasanton, CA 94588, and the Guam Contractors Association Trades Academy, (hereinafter referred to as GCA), having its principal place of business located at 718 N. Marine Corps Drive, Suite 203, East West Business Center, Upper Tumon, GUAM 96913.

WHEREAS, CLPCCD has been authorized as a Region IX OSHA Training Institute Education Center (OTIEC) under contract to the Department of Labor Office of Training and Education (OTE), to provide high quality, standards-based OSHA Certified Training courses and other safety training. Toward that end, CLPCCD conducts its activities in cooperation with colleges and other training entities throughout Region IX.

WHEREAS, GCA wishes to provide Occupational Safety and Health Administration (OSHA) Certified Training courses as a part of a GCA program, offering other occupational and environmental health and safety training courses.

NOW THEREFORE, it is hereby understood between the parties:

**I. SCOPE AND SERVICES**

CLPCCD and GCA shall work collaboratively to provide cost effective official Department of Labor/OSHA numbered courses and regionally relevant courses through both open enrollment and contracts. These courses will primarily be the Department of Labor/OSHA numbered courses, which CLPCCD is currently authorized to offer in Region IX. GCA desires to make available these OSHA numbered courses to help improve knowledge and develop skills within the industry in Region IX. OSHA numbered courses may be listed by GCA in its advertising, catalog and schedule of courses as applicable, CLPCCD shall have the right to inspect and approve copy regarding programs in which it is involved.

**II. DIRECTORS**

CLPCCD and GCA agree to designate program directors to oversee and facilitate implementation of this agreement in cooperation with other appropriate administrators at the respective organizations.

The program directors shall have the following responsibilities:

- A. To act as principle contacts to plan and coordinate all activities within their organizations as well as with the partner organization.
- B. To ensure course offerings and appropriate contract arrangements are in place at least thirty (30) days prior to the course date and have been approved by both parties.
- C. To collaborate in establishing a course schedule by early February of each year that substantially covers the entire subsequent calendar year.
- D. To pursue and maintain excellence in course and instruction quality.

### **III. GCA RESPONSIBILITIES:**

#### A. Courses

- 1. Scheduling – work jointly with CLPCCD to build a schedule of course offerings for the area served by GCA.

#### B. Classroom

- 1. Venue – Provide a classroom at the GCA Trades Academy or other venues, 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 at a GCA location.

#### C. Final CLPCCD and Department of Labor paperwork

- 1. Ensure governmental paperwork for OSHA numbered courses and CLPCCD course evaluations are completed and sent back to CLPCCD within 24 hours after the completion of each course.
- 2. Collect any OSHA Training Institute (OTI)-required reports, and forward to CLPCCD within one week of course conclusion.
- 3. Administer evaluations, demographic surveys, and other documentation as required by CLPCCD for each class.

D. Faculty – Identify instructional staff and refer them to CLPCCD to undergo the CLPCCD faculty approval process.

E. Marketing

1. In partnership with CLPCCD, develop and implement a comprehensive marketing plan. This plan may include, but is not limited to:

- a) Creation and distribution of CLPCCD and GCA course catalogs
- b) Creation and distribution of CLPCCD and GCA individual course flyers
- c) Electronic/internet marketing
- d) Identification of potential students and employers

2. Provide CLPCCD with the GCA logo and appropriate use instructions for purposes of advertising the affiliation.

#### **IV. CLPCCD RESPONSIBILITIES**

A. Courses

1. Course Scheduling – Work jointly with GCA to build a schedule of course offerings for the area served by GCA.

2. Programming – Ensure that courses are properly programmed for future course marketing and registration.

3. Course Preparation

a) Work independently and with GCA to ensure that all appropriate details regarding course delivery have been attended to, including, but not limited to:

(1) Instructors

(2) Classrooms

(3) Course Materials – including training and collateral materials for each course

4. Final CLPCCD and Department of Labor paperwork

- a) Oversee, in cooperation with GCA, program quality and instructor course evaluation procedures to ensure all courses and instructors are evaluated at each course offering using the appropriate evaluation forms.
- b) Provide certificates and other course documentation including evaluations, summaries and demographic surveys as required by OTI and as modified from time to time.

B. Students

1. Registration – Provide enrollment and registration services for all students enrolled in any courses.

- a) Maintain student records
- b) Provide students with a joint CLPCCD / GCA Certificate of Completion upon successful completion of any course.
- c) Implement, maintain and provide appropriate student records to students and to others, such as potential employers, as requested by students.
- d) Collect tuition

2. Respond to student inquiries, and refer to GCA as appropriate.

C. Faculty

1. Contracting

- a) Approve all instructors to teach GCA courses using the standard faculty approval process.
- b) Provide training to approved instructors who are selected to teach GCA/CLPCCD courses.
- c) Work with GCA to provide CLPCCD-approved OSHA instructors to teach courses.

2. Payments

- a) Prepare and process all instructor payments for courses taught.

D. Marketing

1. In cooperation with GCA, develop and implement a comprehensive marketing plan. This plan may include but is not limited to:

- a) Creation and distribution of CLPCCD and GCA course catalogs
- b) Creation and distribution of CLPCCD and GCA individual course flyers
- c) Electronic / internet marketing
- d) Identification of potential students and employers
- e) Provide CLPCCD logo and appropriate use instructions to GCA as requested, for purposes of advertising the affiliation.

2. Other

- a) Maintain quality control over the provision of official Department of Labor / OSHA courses and materials used in these courses.
- b) Cooperate with GCA in the delivery of all training offered through this agreement.

## **V. COURSE CANCELLATION**

- A. CLPCCD and GCA mutually agree to make all reasonable efforts to conduct every scheduled class.
- B. In the event of low enrollment (fewer than 10 enrollments) two weeks prior to a scheduled class, CLPCCD and GCA will collaboratively decide whether to conduct a specific class.
- C. CLPCCD and GCA agree to make good faith efforts to make mutually agreeable decisions.
  - 1. If a joint decision is made to go forward with a class, any negative revenue accrual will be shared equally.
  - 2. If a joint decision to cancel the class is made, no funds will be due to either party.

## **VI. TERM**

This MOU shall be deemed to be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2009. The MOU shall remain in effect and renew annually unless otherwise terminated by either party.

## **VII. TERMINATION**

Termination shall be at will by either party with 60 days written notice. Should the contract be terminated, both parties agree to fulfill their obligations arising prior to the termination of the contract. This includes, but is not limited to, the obligation to allow the enrolled student to complete courses scheduled. Termination may also result from any of the following conditions:

- A. GCA breaches any of the provisions of this MOU and, if subject to cure, fails to cure such breach within ten (10) days of receipt and notice of such breach.
- B. CLPCCD breaches any of the provisions of this MOU and, if subject to cure, fails to cure such breach within ten (10) days of receipt and notice of such breach.

## **VIII. INDEMNIFICATION AND INSURANCE**

GCA shall defend, indemnify and hold CLPCCD 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 GCA, its officers, employees or agents.

CLPCCD shall defend, indemnify and hold GCA 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, its officers, employees or agents.

Both parties agree 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.

## **IX. APPROVAL AND REPRESENTATIVES**

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.

## **X. INDEPENDENT CONTRACTOR STATUS**

The Parties hereby acknowledge that they are independent contractors. As such, each Party shall be liable for any debts, obligations, acts and omissions relating to its own agents, representatives, students or employees, including the deduction of all federal, state and local income taxes, social security, FICA and other charges, if any, to be deducted from the compensation of its employees. Furthermore, in no event shall this Agreement be construed as establishing the relationship of agent, servant, employee, partnership, joint venture, association or any similar relationship between the parties hereto. As independent contractors, each party will be solely responsible for determining the means and methods for performing the services described herein. Each party understands and agrees that other party is engaged in an independent business or enterprise and the party shall have no right to direct or control in any way or to any degree the manner of other party's performance hereunder. Each party further understands that it is not authorized and shall not make any agreement, contract or representation on behalf of the other party or create any obligation, express or implied, on the part of the other party.

Neither CLPCCD nor any of its agents, representatives, students or employees shall be considered agents, representatives, or employees of GCA as a result of this Agreement. Furthermore, each and every person employed by CLPCCD who is providing services to GCA under this Agreement shall, at all times, remain an employee of CLPCCD. CLPCCD employees shall not, at any time, or in any way, be entitled to sick leave, vacations, retirement, or other fringe benefits from the GCA, nor shall they be entitled to overtime pay from the GCA. GCA will make no State or Federal unemployment insurance or disability insurance contributions on behalf of CLPCCD and/or its agents or employees. Neither CLPCCD nor its employees shall be included in the classified or faculty service, have any property rights to any position, or have any of the rights that an employee of the GCA may otherwise have in the event of termination of this Agreement.

Neither GCA nor any of its agents, representatives, students or employees shall be considered agents, representatives, or employees of CLPCCD as a result of this Agreement. Furthermore, each and every person employed by GCA who is providing services to CLPCCD under this Agreement shall, at all times, remain an employee of GCA. GCA employees shall not, at any time, or in any way, be entitled to sick leave, vacations, retirement, or other fringe benefits from the CLPCCD, nor shall they be entitled to overtime pay from the CLPCCD. CLPCCD will make no State or Federal unemployment insurance or disability insurance contributions on behalf of GCA and/or its agents or employees. Neither GCA nor its employees shall be included in the classified or faculty service, have any property rights to any position, or have any of the rights that an employee of the CLPCCD may otherwise have in the event of termination of this Agreement.

## **XI. JURISDICTION AND VENUE**

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. All claims, disputes and/or lawsuits in connection with this Agreement shall be brought solely within the state and federal courts sitting in the state of California, and each party to this Agreement hereby irrevocably submits to the jurisdiction and venue of such courts.

## **XII. GENERAL PROVISIONS**

A. Notices – All notices required to be given to CLPCCD or GCA 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 will be sent to:

Julia A. Dozier  
Director, OSHA Training Center  
Chabot-Las Positas Community College District  
5020 Franklin Drive  
Pleasanton, CA 94588  
Phone: (925) 485-5234  
Fax: (925) 485-5211  
E-mail: [jdozier@CLPCCD.org](mailto:jdozier@CLPCCD.org)

All notices to GCA will be sent to:

James Martinez  
Executive Director  
Guam Contractors Association Trades Academy  
718 N. Marine Corps Drive, Suite 203  
East West Business Center  
Upper Tumon, GUAM 96913  
Ph: 671-647-4840  
Fax: 671-647-4866  
E-mail: \_\_\_\_\_



B. Modification – No provision of this MOU may be changed, modified or waived in whole or in part except by an instrument duly signed by CLPCCD and GCA.

C. 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.

D. Entire MOU – This MOU constitutes the entire understanding between CLPCCD and GCA with respect to the subject matter hereof and shall supersede all prior written or oral agreements, if any, between CLPCCD and GCA with respect to the subject matter herein.

E. Attorneys' Fees. In the Event of a dispute under this Agreement, each Party shall bear its own attorneys' fees and costs.

F. 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.

G. Non-Liability of Officials. No officer, member, employee, agent, or representative of either Party shall be personally liable 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.

H. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not signatory to this Agreement.

I. Captions. The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.

J. No Waiver. Any failure of a party 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.

K. Counterparts. This Agreement may be executed in any number of counterpart copies, 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 MOU duly executed on this, the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

FOR:  
Chabot-Las Positas Community College District

Guam Contractors Association  
Trades Academy

\_\_\_\_\_  
Lorenzo Legaspi  
Vice Chancellor, Business Services

\_\_\_\_\_  
James Martinez  
Executive Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Chabot-Las Positas Community College District

\_\_\_\_\_  
Larry Chesney  
Associate Director, OSHA Training Center

\_\_\_\_\_  
Date