

MEMORANDUM OF UNDERSTANDING
between
CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT
and
CAL INC. TRAINING LLC

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into as of this 15th day of March, 2010, 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 Cal Inc Training LLC (hereinafter referred to as CAL INC), having its principal place of business located at 2040 Peabody Road, Vacaville, CA 95687.

RECITALS

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

WHEREAS, CAL INC 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's Program that will allow the CAL INC students to receive OSHA-certified Training, and prospectively leading to Certification by CLPCCD if they meet CLPCCD's requirements;

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

I. SCOPE AND SERVICES

CLPCCD and CAL INC shall work collaboratively to provide cost effective official Department of Labor/OSHA Courses and regionally relevant courses through both open enrollment and under contract with third parties. This instruction will primarily be the Department of Labor/OSHA Courses that CLPCCD is authorized to offer within its designated OSHA-Region IX service area. CAL INC's catchment area lies within that portion of Region IX in Northern California, serving the North Bay, Sacramento Valley, and adjacent communities in the Sierra Nevada foothills. CAL INC desires to make these Courses available to individuals seeking to improve their knowledge of industrial safety, and to develop required safety skills within industries affected by OSHA requirements.

II. PROGRAM DIRECTOR

CAL INC shall designate a Program Director to oversee and facilitate implementation of this Agreement in cooperation with other appropriate administrators within the organization.

Program Director shall have the following responsibilities:

- A. To act as Principal Contact to plan and coordinate all activities within the organization as well as with CLPCCD.

- 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 CLPCCD.
- C. To collaborate with CLPCCD in establishing a course schedule by early October of each year that substantially covers the entire subsequent calendar year.
- D. To pursue and maintain excellence in course and instruction quality.

III. CAL INC RESPONSIBILITIES

CAL INC Program Director shall have the following responsibilities:

- A. Courses.
 - 1. Scheduling – Work jointly with CLPCCD to build a schedule of course offerings for the area served by CAL INC.
 - 2. Course Materials – Supply all course materials (handouts, books, etc.), course supplies, equipment and any other collateral materials for each course.
- B. Classroom.
 - 1. Venue – Provide a classroom 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. Finalize CLPCCD and Department of Labor paperwork and to perform all the following:
 - 1. Administer evaluations, demographic surveys, and other documentation as required by CLPCCD for each class.
 - 2. Ensure course evaluations are completed and sent back to CLPCCD within five business days following completion of the course.
 - 3. Collect any OSHA Training Institute (OTI)-required reports and forward to CLPCCD within five business days of course conclusion.
- D. Faculty –Identify prospective Course instructors and refer them to CLPCCD for approval.
- E. Marketing.

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

- 1. Creation and distribution of CLPCCD and CAL INC marketing collateral. CLPCCD shall have the right to review and approve course descriptions and promotional materials regarding programs in which it is involved. OSHA

numbered courses may be listed by CAL INC in its marketing collateral and schedule of courses.

2. Creation and distribution of CLPCCD and CAL INC individual course flyers.
3. Electronic/internet marketing.
4. Identification of potential students and employers.

IV. CLPCCD RESPONSIBILITIES

CLPCCD shall have the following responsibilities:

A. Courses.

1. Course Scheduling – Work jointly with CAL INC to build a schedule of course offerings for the area served by CAL INC.
2. Programming – Ensure that courses are properly programmed for future course marketing and registration.
3. Course Preparation.
 - a. Work independently and with CAL INC to ensure that all appropriate details regarding course delivery have been attended to, including, but not limited to, recruiting, selecting, hiring, training, retaining, and employing, any and all of the following:
 - i. Instructors.
 - ii. Classrooms.
 - b. Except where otherwise agreed upon, CLPCCD will be primarily responsible for recruiting and hiring instructors to teach CLPCCD courses at CAL INC Facilities. CAL INC may propose its own instructors to teach courses to be held at CAL INC Facilities, subject to CLPCCD's approval of their professional credentials and relevant experience, which approval shall not be unreasonably withheld.
 - c. Source materials and standards for instruction, accreditation, and certification originate with United States Department of Labor/OSHA (DOL). CLPCCD's review and approval of classroom and teaching materials prepared by CAL INC shall not substantially exceed standards adopted by DOL for determining full compliance with OSHA standards of instruction.
4. Prepare final CLPCCD and DOL recordkeeping and certifications, including:
 - a. Overseeing, in cooperation with CAL INC, program quality and instructor course evaluation procedures to ensure all courses and instructors are evaluated at each course offering using the appropriate evaluation forms.

Chabot-Las Positas Community College District
Cal Inc. Training LLC

- b. Providing certificates and other course documentation including evaluations, summaries and demographic surveys as required by DOL and as modified from time to time.

B. Students.

1. Registration – Provide enrollment and registration services for all students enrolled in courses.
2. Student Records – Maintain accurate student records.
3. Provide students with a joint CLPCCD / CAL INC Certificate of Completion upon successful completion of course.
4. Implement, maintain and provide appropriate student records to students and to others, such as potential employers, as requested by students.
5. Collect tuition.
6. Respond to student inquiries and complaints promptly, with a copy to CAL INC.

C. Faculty.

1. Contracting.
 - a. Approve all instructors to teach CAL INC Courses using the standard faculty approval process.
 - b. Provide training to approved instructors who are selected to teach CAL INC/CLPCCD Courses as needed.
 - c. Work with CAL INC to provide CLPCCD-approved OSHA instructors to teach Courses.
2. Payments.

Prepare and process all instructor payments for Courses taught, including issuance of IRS 1099 forms.

D. Marketing.

1. In cooperation with CAL INC, develop and implement a comprehensive marketing plan. This plan may include but is not limited to:
 - a. Creation and distribution of CLPCCD and CAL INC catalogs.
 - b. Creation and distribution of CLPCCD and CAL INC individual course flyers.
 - c. Electronic / internet marketing.

- d. Identification of prospective students and employers.
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 CAL INC in the delivery of all training offered through this Agreement.
 - c. Reconcile accounts, issue statements of account, and distribute revenue within 45 days of course completion.
 - d. Perform program administration in accordance with CLPCCD's standards for administrative and financial accountability and reporting.

V. COST AND PROFIT SHARING

1. CLPCCD shall register students and collect tuition fees for all classes. After payment has been made to the instructor(s), fifteen percent (15%) of the balance as an administrative fee shall be paid to CAL INC as a means to help offset its expenses.
2. As Profit Sharing, CAL INC shall be entitled to thirty three and a third percent (33.3%) of the tuition fees, after instructor and administrative fees, for each class delivered by CAL INC and CLPCCD shall retain the remaining 66.6%.
3. Profit Sharing shall be calculated based on the amount collected for each class, dependent on actual monies received and actual costs incurred. Unless otherwise agreed upon, District shall send payment to CAL INC within 45 days of receipt of all fees for each of CAL INC's completed classes. Payments will be made payable to the Cal Inc. Training LLC, and sent to 2040 Peabody Road, Vacaville, CA 95687.

VI. 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 an audited statement 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.

C. Course Cancellation.

1. The parties mutually agree to make all reasonable efforts to conduct every scheduled class; however, the parties understand and agree that continuation of all classes scheduled may not be feasible in every case. In the event that fewer than 10 students have enrolled in a scheduled class ("low enrollment"), or for other good and sufficient reasons, not later than two weeks prior to the commencement of such scheduled class, the parties will confer to determine whether that low enrollment class will be canceled. Such efforts shall be made in good faith and every reasonable effort shall be made to ensure that their decisions are concurrent, and in accordance with the following decisional criteria:
 - a. If the decision is made to go forward with a class, any shortfall in revenue received will be shared equally between the parties, and any reimbursement due a party shall be invoiced to the reimbursing party within the thirty-day period set forth in Article IV.D.2 above and promptly paid.
 - b. If the decision is made to cancel a class, any costs incurred will be shared and no profit will be due from either party to the other.

VII. COMPENSATION AND REIMBURSEMENT

- A. CLPCCD will annually set a schedule of course fees to be charged for all open enrollment Courses agreed upon at the signing of this MOU. Contract Courses will be individually priced by CLPCCD, in consultation with CAL INC. Fees shall be sufficient to cover the parties' direct out-of-pocket expenses, without regard to indirect costs, or imputed costs to administer this Agreement, except as expressly provided herein.
- B. Direct Program Costs may include:
 1. Instructor salary.
 2. Instructor travel costs.
 3. Course material printing and shipping.
 4. Student enrollment processing fees.
 5. Training materials.

6. Room/venue rentals.

7. Such additional costs and expenses, as may be necessary, and upon which the parties may agree.

- C. 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.
- D. Within 30 days of completing each scheduled course, the parties will exchange their paid invoices for direct costs incurred. CLPCCD will provide a final course summary of fees and expenses following receipt of all invoices and will make payment according to the schedule detailed above within 30 days of receipt of all final invoices. In maintaining accounts and disbursing funds, pursuant to this Agreement, CLPCCD shall be deemed a trustee for the parties with fiduciary duties.

VIII. 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 or 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 CAL INC and CLPCCD, 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.

IX. DISCLAIMERS

- A. WITH RESPECT TO INFORMATION, DATA, OR MATERIALS TO BE FURNISHED TO PROSPECTIVE STUDENTS PURSUANT TO THIS AGREEMENT, CAL INC AND CLPCCD, 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 TO CAL INC TO BE USED TO PROVIDE INSTRUCTION TO OTHER PERSONS PURSUANT TO THIS AGREEMENT, CAL INC WILL BE RELYING UPON INFORMATION, DATA, AND MATERIALS FURNISHED TO CAL INC BY CLPCCD, AND CAL INC 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.

X. TERM

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

XI. 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 nonbreaching 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.

XII. INDEMNIFICATION AND INSURANCE

- A. CAL INC 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 CAL INC, its officers, employees or agents.
- B. CLPCCD shall defend, indemnify and hold CAL INC 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.
- 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.

XIII. 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.

XIV. 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.

XV. 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.

XVI. GENERAL PROVISIONS

- A. Notices – All notices required to be given to CLPCCD or CAL INC shall be given in writing either by personal delivery, first class postage prepaid, or by certified mail, return receipt

Chabot-Las Positas Community College District
Cal Inc. Training LLC

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
District Executive Director
Economic Development & Contract Education
Chabot-Las Positas Community College District
7600 Dublin Blvd., Suite 102
Dublin, CA 94568
Phone: (925) 560-9441
Fax: (925) 560-9458
E-mail: jdozier@clpccd.org

All notices to CAL INC will be sent to:

Cal Inc. Training LLC
2040 Peabody Road
Vacaville, CA 95687
Phone: (707) 446-7996
Fax: (707) 446-9072

- 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 and CAL INC with respect to the subject matter hereof and shall supersede all prior written or oral agreements, if any, between CLPCCD and CAL INC 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 Cal Inc. Training LLC as to the performance of any contractual duty or obligation agreed to be performed by CAL INC 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.

Chabot-Las Positas Community College District
Cal Inc. Training LLC

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 _____, 2009.

CHABOT-LAS POSITAS
COMMUNITY COLLEGE DISTRICT

CAL INC. TRAINING LLC

Lorenzo S. Legaspi
Vice Chancellor, Business Services

David Esparza
President

Date

Date

3/15/10

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

Date