

MEMORANDUM OF UNDERSTANDING

between

CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT

and

THE UNIVERSITY OF CALIFORNIA, SANTA CRUZ EXTENSION

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into as of this 23rd day of November, 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 The Regents of the University of California, on behalf of University of California Santa Cruz Extension (hereinafter referred to as UCSC EXTENSION), having its principal place of business located at 2505 Augustine Drive, Suite 100, Santa Clara, CA 95054-3003.

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, UCSC EXTENSION 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 UCSC EXTENSION students to receive OSHA-certified Training, and prospectively leading to Certification by CLPCCD if they meet CLPCCD's requirements therefore;

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

I. SCOPE AND SERVICES

CLPCCD and UCSC EXTENSION 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 currently authorized to offer within its designated OSHA-Region IX service area. UCSC EXTENSION catchment area lies within that portion of Region IX in Northern California, serving the South San Francisco Bay Area. UCSC EXTENSION desires to make these Courses available throughout its calendar year 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

UCSC EXTENSION and CLPCCD each 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 Principal 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 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. UCSC EXTENSION RESPONSIBILITIES

UCSC EXTENSION 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 UCSC EXTENSION.
- B. Classroom.
 - 1. Venue – Provide a classroom at a UCSC EXTENSION location, on or off-site, with appropriate space, seating, lighting, standard audio visual equipment (including computer and data projector), 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 UCSC EXTENSION 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 UCSC EXTENSION in its marketing collateral and schedule of courses.
2. Creation and distribution of CLPCCD and UCSC EXTENSION 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 UCSC EXTENSION to build a schedule of course offerings for the area served by UCSC EXTENSION.
2. Course Materials -Supply all course materials (handouts, books, etc.), course supplies, equipment and any other collateral materials for each course, as set forth in Article IV (A)(4)(c)
3. Programming – Ensure that courses are properly programmed for future course marketing and registration.
4. Course Preparation.
 - a. Work independently and with UCSC EXTENSION 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 instructors, subject to UCSC EXTENSION's reasonable approval, and assisting with classroom scheduling.
 - b. Except where otherwise agreed upon, CLPCCD will be primarily responsible for recruiting and hiring instructors, subject to UCSC EXTENSION's reasonable approval, to teach at UCSC EXTENSION facilities. UCSC EXTENSION may propose its own instructors to teach courses to be held at UCSC EXTENSION 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 (DOL)/OSHA.

Chabot-Las Positas Community College District
University of California, Santa Cruz Extension

5. Prepare final CLPCCD and DOL recordkeeping and certifications, including:
 - a. Overseeing, in cooperation with UCSC EXTENSION, 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. Providing 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 courses.
2. Student Records – Maintain accurate student records.
3. Provide students with a joint CLPCCD / UCSC EXTENSION Certificate of Completion upon successful completion of any 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.

C. Respond to student inquiries and complaints promptly, with a copy to UCSC EXTENSION Faculty.

1. Contracting.
 - a. Approve all instructors to teach UCSC EXTENSION courses using the standard faculty approval process.
 - b. Provide training to approved instructors who are selected to teach UCSC EXTENSION/CLPCCD courses.
 - c. Work with UCSC EXTENSION 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. Keep accurate payment records and books and accounts.

D. Marketing.

Chabot-Las Positas Community College District
University of California, Santa Cruz Extension

1. In cooperation with UCSC EXTENSION, develop and implement a comprehensive marketing plan. This plan may include but is not limited to:
 - a. Creation and distribution of CLPCCD and UCSC EXTENSION catalogs.
 - b. Creation and distribution of CLPCCD and UCSC EXTENSION 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 UCSC EXTENSION in the delivery of all training offered through this Agreement.
 - c. Reconciliation of accounts and issuance of statements of account to UCSC EXTENSION, and distribution of revenue to UCSC EXTENSION as set forth in Article VII below, to be completed within 45 days of course completion.
 - d. Perform Program administration in accordance with CLPCCD's standards for administrative and financial accountability and reporting, including without limitation, maintaining program revenue from tuition fees in a separate account.

V. [INTENTIONALLY OMITTED.]

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 to be produced pursuant to this Agreement. The parties shall use such property solely for the purposes specified in this Agreement, and for no other purpose or usage. Each party shall have the right to elect to review and approve the other party's proposed use of the party's logos and trademarks prior to the use.
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.

4. CLPCCD acknowledges that section 92000 of the California Education Code restricts use of the name of the University of California. Except as provided herein, CLPCCD shall not use the name, logo, trademark or proprietary mark of UCSC EXTENSION or the University of California without the prior written approval of The Regents of the University of California.

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 8 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 meet and 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 forty five day period set forth in Article IV.D.2 above, and promptly paid.
 - b. If the decision is made to cancel a class, each party shall bear its own costs, and no funds will be due from either party to the other.

VII. COMPENSATION, REIMBURSEMENT AND PROFIT SHARING

- A. All payments to UCSC EXTENSION under this Agreement will be made payable to the University of California, Santa Cruz Extension, and sent to 2505 Augustine Drive, Suite 100, Santa Clara, CA 95054-3003.
- B. CLPCCD shall register students and collect tuition fees for all classes. CLPCCD and UCSC EXTENSION together will annually set a schedule of course fees to be charged for all open

Chabot-Las Positas Community College District
University of California, Santa Cruz Extension

enrollment Courses agreed upon at the signing of this MOU. Contract Courses will be individually priced by CLPCCD, in consultation with UCSC EXTENSION. Fees shall be sufficient to cover the parties' Direct Program Costs (as defined below), without regard to indirect costs, or imputed costs to administer this Agreement, except as expressly provided herein.

- C. "Direct Program Costs" means those costs a party reasonably incurs for:
1. Instructor salary.
 2. Instructor travel costs.
 3. Course material printing and shipping.
 4. Training materials.
 5. Room/venue rentals at the following rates [\$275 per day _____].
- D. 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.
- E. Within forty five days of completing each scheduled course, the parties will exchange their paid invoices for Direct Program Costs incurred for such course(s). CLPCCD will provide a final course summary of Direct Program Costs for such course(s) following receipt of all invoices and will make payment to UCSC EXTENSION for its Direct Program Costs 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 and shall cooperate with any audit of such accounts and funds as UCSC EXTENSION may from time to time undertake.
- F. In the event that CLPCCD collects fees for a course that exceed the amount of the parties' Direct Program Costs for such course, the parties shall be entitled to such excess fees ("Excess Tuition Fees") as follows: UCSC EXTENSION shall be entitled to thirty five percent (35%) of the "Excess Tuition Fees" and CLPCCD shall retain the remaining 65%. CLPCCD shall send payment to UCSC EXTENSION of its share of any Excess Tuition Fees within 45 days of receipt of all fees for each UCSC EXTENSION's completed class.
- G. Except as set forth above, each party shall perform its obligations under this Agreement at its sole costs and expense.

VIII. NO OBLIGATION TO THIRD PARTIES.

- A. Neither party shall be liable to the other party for any loss of profits, consequential damages or, except as set forth in Article XII below, claims against either party by any other person not a signatory hereto, even if that party is advised of the possibility of such loss of profits, consequential damages or claims.

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 UCSC EXTENSION 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, UCSC EXTENSION 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 UCSC EXTENSION TO BE USED TO PROVIDE INSTRUCTION TO OTHER PERSONS PURSUANT TO THIS AGREEMENT, UCSC EXTENSION WILL BE RELYING UPON INFORMATION, DATA, AND MATERIALS FURNISHED TO UCSC EXTENSION BY CLPCCD, AND UCSC EXTENSION 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, with an option for annual re-negotiation, and shall renew annually, unless otherwise terminated by either party as set forth in Article XI below.

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. UCSC EXTENSION 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 UCSC EXTENSION, its officers, employees or agents.
- B. CLPCCD shall defend, indemnify and hold UCSC EXTENSION 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 licensed 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, provided that such a provision shall apply only in proportion to and to the extent of the negligent acts or omissions of the primary insured party, its officers, partners, agents, and employees. Each party 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 the effective date of this Agreement 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.

Chabot-Las Positas Community College District
University of California, Santa Cruz Extension

- A. The parties to this Agreement shall be and remain at all times independent contractors, neither being employee, agent, representative, co-venturer, partner 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 is possible and reasonable under the circumstances. Each party consents and agrees to participate in such mediation, conciliation, or other dispute resolution measures as may be offered 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 UCSC EXTENSION 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
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

Chabot-Las Positas Community College District
University of California, Santa Cruz Extension

All notices to UCSC EXTENSION will be sent to:

University of California, Santa Cruz Extension
Attn: Michelle M. Ragozzino
2505 Augustine Drive, Suite 100,
Santa Clara, CA 95054-3003
Phone: (408) 861-3861
Fax: (408) 861-3870

- 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 UCSC EXTENSION with respect to the subject matter hereof and shall supersede all prior written or oral agreements, if any, between CLPCCD and UCSC EXTENSION 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 and the assignee holds any certifications or licenses necessary to do so. Nothing herein shall prevent or restrict the administrative reassignment by UCSC EXTENSION as to the performance of any contractual duty or obligation agreed to be performed by UCSC EXTENSION 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 23rd day of November, 2010.

Chabot-Las Positas Community College District
University of California, Santa Cruz Extension

CHABOT-LAS POSITAS
COMMUNITY COLLEGE DISTRICT

Lorenzo S. Legaspi
Vice Chancellor, Business Services

Date

Chabot-Las Positas Community College District

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

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA


Lynda M. Rogers
Dean, UCSC EXTENSION

11/23/2010
Date

11/23/2010
Date