

MEMORANDUM OF UNDERSTANDING (MOU)

AN AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN The Peralta Community College District, College of Alameda AND Las Positas College

1 PREFACE

1.1 PARTIES

This is an agreement (“AGREEMENT”) between The Peralta Community College District, College of Alameda (“COA”), located at 555 Ralph Appezato Memorial Parkway, Alameda, California and Las Positas College (“LPC”), including its officers, employees, consultants, subcontractors, and agents, (“LPC”) another Community College within the Chabot-Las Positas Community College District, with its principal office at 3000 Campus Hill Drive Livermore, California 94551-7623 (collectively “PARTIES”).

1.2 Effective Date and Term

The effective date of this AGREEMENT is March 1, 2011 (“EFFECTIVE DATE”). AGREEMENT remains effective until it terminates on June 30, 2012 (“TERMINATION DATE”), unless terminated sooner, as provided herein.

2 AUTHORIZATION

Workforce Innovation Partnership for Economic Development and Workforce Preparation Division of the Chancellor’s office of the California Community Colleges. Governor’s Career Technical Education Initiative (SB70/1133). Job Development Funds Grant RFA Specification No. 10-336

3 NON-APPROPRIATION OF FUNDS

The principal agreement between the LAS POSITAS COLLEGE and COA, allocating funds for the Direct Support Workers Career Ladder Training and Employment Project, is valid and enforceable only if sufficient funds are made available by the Community College Chancellor’s Office for the purpose of this program. In addition, the principle agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by Congress or the State Legislature that may affect the provisions, terms, or funding of the principle agreement. Therefore, if funds are not appropriated for any succeeding fiscal year subsequent to the one in

which this AGREEMENT is entered into, for the purposes of this AGREEMENT, then COA may terminate this AGREEMENT upon thirty (30) days prior written notice to LAS POSITAS COLLEGE. Should termination be accomplished in accordance with this Section, COA shall be liable only for payments due through the date of termination.

4 SERVICES AND OBLIGATIONS

Las Positas College and COA shall comply with the required elements established for Workforce Innovations Partnership Grant Agreements.

4.1 Las Positas College Obligations

4.1.1 Service

Las Positas College shall deliver outcomes as specified in Exhibit A—Work Plan (collectively, “WORK”).

4.1.2 Requirements for Communication and Reporting

Las Positas College shall be required to submit itemized quarterly invoices in accordance with Exhibit B—Pricing and Payment Schedule.

Las Positas College shall be required to submit on a quarterly basis relevant data regarding each student in order to allow COA to comply with grant reporting requirements.

4.1.2.1 Invoices

See section 5 and Exhibit B—Pricing and Payment Schedule.

4.1.2.2 Ongoing Contact and Monitoring

Ongoing contact with project director is required.

Las Positas College agrees to allow the following monitoring activities:

- *Site visits* – Las Positas College shall allow periodic site visits by Project Director observe operations.
- *Regular contact* – COA and Las Positas College shall maintain regular contact and appropriate inquiries concerning program activities.

4.2 Standard of Performance

Las Positas College represents that it is qualified to perform the WORK and that it possesses and will continue to possess, at its sole cost and expense, all licenses, registrations, permits, and personnel necessary to provide the work.

4.3 Subcontracting

Las Positas College is prohibited from entering into any third or subsequent tier subcontracts or grants with additional written approval by the project monitor for the Job Development Incentive Funds Grant No. 10-336.

5 ALLOWABLE COSTS AND PAYMENT

5.1 Schedule of Payments

COA shall pay Las Positas College according to Exhibit B--Pricing and Payment Schedule.

Las Positas College shall invoice COA for payments as set forth in Exhibit B. Late payment by COA shall not constitute a material breach of the AGREEMENT.

5.2 Allowable Costs

Las Positas College shall compensate its employees for work done to meet the goals, objectives, and work plan of the project. This contract does not permit Las Positas College to charge *indirect* expenses to COA for the performance of these services. Las Positas College will invoice COA for *direct* expenses and services incurred after those expenses have been incurred and after services have been delivered.

5.3 Payment Not Acceptance

No payment made to Las Positas College shall be construed as an acceptance or approval of any of the WORK or constitute a waiver of any claim or right that COA may then or thereafter have against Las Positas College. Payments shall be subject to correction or adjustment in subsequent reviews and payments.

5.4 Payments Withheld

COA may withhold payment on or offset against an invoice or a portion thereof in an amount and to such extent as may be reasonably necessary to protect COA from loss because of:

- a. Subcontractor's failure to supply the WORK in accordance with the AGREEMENT;
- b. third-party claims, suits, or liens arising out of or relating to Las Positas College's supply of the WORK, except to the extent secured or provided for by insurance, bond, or otherwise to COA's reasonable satisfaction; or
- c. Las Positas Colleges failure to pay money to CA when due.

5.5 No Obligation to Make Payment

Notwithstanding any provision to the contrary, COA shall have no obligation to make any payment to LAS POSITAS COLLEGE at any time, after NOTICE to LAS POSITAS COLLEGE when:

- a. LAS POSITAS COLLEGE is in material breach of the AGREEMENT; or
- b. LAS POSITAS COLLEGE fails to furnish and maintain evidence of current insurance in accordance with the requirements of the AGREEMENT.

5.6 Taxes

LAS POSITAS COLLEGE agrees to file applicable local, county, state, and federal tax returns and pay all applicable local, county, state and federal taxes on amounts paid pursuant to the AGREEMENT. In case COA is audited for compliance regarding any applicable taxes, LAS POSITAS COLLEGE agrees to furnish COA with proof of payment of taxes on those earnings. LAS POSITAS COLLEGE acknowledges that COA will report all earnings to the California State Franchise Tax Board and the Internal Revenue Service as required by law.

6 INDEMNITY

6.1 Indemnification of COA

LAS POSITAS COLLEGE shall defend, indemnify, and hold harmless COA and its officers, agents, employees against all claims, demands, actions, costs (including attorneys' fees) or liability arising from or related to the negligence, willful misconduct, or omission of LAS POSITAS COLLEGE, its officers, agents, or employees in connection with or arising from or out of the performance of this AGREEMENT.

COA shall defend, indemnify, and hold harmless the LAS POSITAS COLLEGE against all claims, demands, actions, costs (including attorneys' fees) or liability arising from or related to the negligence, willful misconduct, or omission of COA, its officers, agents, or employees in connection with or arising from or out of the performance of this AGREEMENT.

This indemnification obligation shall survive the termination or expiration of this AGREEMENT.

6.2 Continuing Performance

If any 3rd party claim materially impairs performance of the WORK, then the indemnifying party, at its sole expense, shall timely procure the right from said 3rd party to continue its performance of its obligations under the AGREEMENT. Further, if an indemnified party should be enjoined from the use of any materials, combinations, or processes provided or to be provided under this AGREEMENT, then the indemnifying party shall either:

1. promptly secure termination of any injunction and procure for the affected indemnified party the right to use such material, combination, or process, without obligation or liability; or
2. promptly replace such materials, combinations, or processes, or modify the same to become non-infringing,

all at indemnifying party's sole expense, but subject to all the requirements of the AGREEMENT.

7 COMPLIANCE WITH LAWS AND CERTIFICATIONS

7.1 Compliance with Laws

LAS POSITAS COLLEGE declares that LAS POSITAS COLLEGE is eligible to contract with the State of California.

LAS POSITAS COLLEGE declares that LAS POSITAS COLLEGE shall fully comply with all laws, executive orders, regulations, COA Board Policies, and other legal requirements applicable to LAS POSITAS COLLEGE and to the WORK. Failure to comply with this Article shall constitute a material breach of the AGREEMENT.

Applicable Federal and California laws, orders, regulations, policies, and other program related documents, which may be revised from time to time, are incorporated herein by reference as though set forth in their entirety. Applicable documents are referenced in **Exhibit C** of this AGREEMENT. Additional copies may be obtained from COA upon request. LAS POSITAS COLLEGE's endorsement on this AGREEMENT signifies that appropriate LAS POSITAS COLLEGE personnel have read and understand all applicable laws, regulations, guidelines, and policies, and serves to certify that LAS POSITAS COLLEGE will abide by the provisions thereof. The failure of LAS POSITAS COLLEGE to examine and abide by any of the documents, or the terms and conditions of this AGREEMENT, shall in no way relieve LAS POSITAS COLLEGE from obligations with respect to the requirements contained in the documents or the AGREEMENT.

7.2 Technology Accessibility

LAS POSITAS COLLEGE hereby warrants that the WORK to be provided under the AGREEMENT complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended, its implementing regulations set forth at Title 36, CFR, part 1194, and California Government Code Section 11135 incorporating Section 508. LAS POSITAS COLLEGE agrees to promptly respond to and resolve any complaint regarding accessibility of the WORK which is brought to its attention.

7.3 Equal Opportunity

7.3.1 Equal Employment Opportunity

LAS POSITAS COLLEGE's execution of AGREEMENT certifies that LAS POSITAS COLLEGE shall comply with Executive Order ("E.O.") 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

7.4 Non-Discrimination

LAS POSITAS COLLEGE agrees to comply with Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 11246, COA Board Policy 4.03, and all applicable laws, rules, and regulations in regard to non-discrimination and equal opportunity. LAS POSITAS COLLEGE agrees and assures that it will not discriminate against, permit discrimination against, harass, or permit harassment against any individual, including but not limited to employees, applicants for employment, or students, because of race, color, religion, creed, national origin, sex, actual or perceived sexual orientation, transgender status at any stage, marital status, disability, medical status or conditions, age, ancestry, gender identity, political affiliation, veteran status, or other personal characteristic protected by law. LAS POSITAS COLLEGE will, in all solicitations or advertisements for employees, placed by or on behalf of LAS POSITAS COLLEGE, state that all qualified applicants will receive consideration for employment without regard to the aforementioned protected personal characteristics. LAS POSITAS COLLEGE certifies that it does not and will not maintain segregated facilities.

7.4.1 Posting

LAS POSITAS COLLEGE agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the non-discrimination provisions of this Article. LAS POSITAS COLLEGE will send each labor union or representative of workers with which LAS POSITAS COLLEGE has a collective bargaining agreement or other contract or understanding a notice, to be provided by the contracting officer, advising of LAS POSITAS COLLEGE'S commitments under Executive Order 11246.

7.5 Sexual Harassment

LAS POSITAS COLLEGE declares that it will not sexually harass or permit sexual harassment against any individual, including but not limited to employees, applicants for employment, or students. COA shall have the right to remove an alleged offender from performance of the WORK pending the results of a sexual harassment investigation.

7.6 Conflicts of Interest

LAS POSITAS COLLEGE represents that it is familiar with California Government Code Sections 1090 et seq. and 87100 et seq., and that it does not know of any facts that constitute a violation of said sections or Peralta Community College District conflict of interest code, Board Policy 6.86. LAS POSITAS COLLEGE represents that it has completely disclosed to COA, and

if applicable will disclose in the future, all facts bearing upon any possible interests, direct or indirect, which LAS POSITAS COLLEGE believes any member of COA, or other officer, agent, or employee of COA or any department presently has, or will have, in the AGREEMENT, or in the performance thereof, or in any portion of the profits thereunder. If LAS POSITAS COLLEGE subsequently becomes aware of any such facts, LAS POSITAS COLLEGE shall promptly provide NOTICE to COA of same, along with a proposal for remedying the violation. COA, at its sole discretion, may determine whether the proposal or any other proposed resolution is satisfactory.

LAS POSITAS COLLEGE represents that it does not presently have, and shall not have during the AGREEMENT PERIOD, any direct or indirect interest that would conflict in any manner or degree with the performance of WORK required by the AGREEMENT. LAS POSITAS COLLEGE further represents that it will not employ, subcontract to, or otherwise involve any person or entity having such conflicts of interest in the performance of the AGREEMENT. If LAS POSITAS COLLEGE subsequently becomes aware of any such conflicts of interest, LAS POSITAS COLLEGE shall promptly provide NOTICE to COA of same, along with a proposal for remedying the violation. COA, at its sole discretion, may determine whether the proposal or any other proposed resolution is satisfactory.

LAS POSITAS COLLEGE is aware of California conflict of interest provisions applicable to current State employees (Public Contract Code section 10410), former state employees (Public Contract Code section 10411).

7.7 Fraud or Misappropriation

LAS POSITAS COLLEGE certifies that none of its officers have been convicted of fraud or misappropriation of funds.

7.8 Rights to Inventions Made under AGREEMENT

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

7.9 Air and Water Provisions

LAS POSITAS COLLEGE shall, when applicable, agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).

7.10 State Certification Clauses—SIGNATURE ON EXHIBIT D REQUIRED

By executing AGREEMENT, LAS POSITAS COLLEGE certifies that they are knowledgeable of and will comply with the California provisions listed herein, described in Exhibit D— Contractor Certification Clauses.

Exhibit D requires the signature of LAS POSITAS COLLEGE’S authorizing agent.

8 CONFIDENTIALITY

8.1 Duty to Keep Information Confidential

COA and LAS POSITAS COLLEGE are subject to the California Public Records Act. Bearing applicable law, LAS POSITAS COLLEGE shall treat as confidential all non-public information disclosed by COA in connection with this Agreement, including but not limited to written or oral communications, education records (as defined under the Family Educational Rights and Privacy Act of 1974 (FERPA)), personal data, plans, specifications, and other data (collectively, “Confidential Information”). The terms and conditions of this Agreement shall also be deemed Confidential Information. LAS POSITAS COLLEGE shall not disclose Confidential Information to any third party except as COA authorizes, and shall only disclose it to those within LAS POSITAS COLLEGE’s organization who need to use it in performance of the Agreement. Upon completion or termination of this Agreement, Contractor shall return or destroy all such Confidential Information (except for this Agreement), or otherwise dispose of it as COA may approve. This provision is not intended to restrict LAS POSITAS COLLEGE’s right to use or disclose information that is already known to the public or rightfully obtained without restriction from other sources. LAS POSITAS COLLEGE shall defend, indemnify and hold harmless COA from and against any and all claims, demands, damages, liabilities, expenses, losses of every nature and kind, including but not limited to attorney’s fees and costs, sustained or alleged to have been sustained by COA as a result of any disclosure or use of any Confidential Information in violation of this Agreement.

8.2 Breach of Confidentiality

Both PARTIES agree that in the event of a breach, threatened breach, violation, or evasion of the terms of this provision, immediate and irreparable injury shall occur to the injured party, that such injury shall be impossible to measure or remedy in monetary damages, and COA shall be authorized to seek recourse to all equitable remedies, including injunctive relief or specific performance, provided however that such remedies shall not be exclusive of other legal or equitable remedies otherwise available under this AGREEMENT and/or at law.

8.3 Duration of Obligation

The obligations of the PARTIES pursuant to this article on Confidentiality shall extend indefinitely beyond the AGREEMENT PERIOD.

9 FINANCIAL STATUS, RECORDS, AND NOTICE

9.1 Financial Solvency

By signing the AGREEMENT, LAS POSITAS COLLEGE affirms financial stability and continued solvency. At the request of COA, LAS POSITAS COLLEGE will provide written evidence of its financial stability and solvency.

9.2 Accounting Records and Auditing

LAS POSITAS COLLEGE shall keep accurate and complete accounting records concerning performance of the AGREEMENT in accordance with state and Federal guidelines, and generally recognized accounting principles and practices consistently applied.

COA shall have the right at any reasonable time to examine, audit, and reproduce the records. If such records are not kept and maintained within a radius of 75 miles from COA's main offices, LAS POSITAS COLLEGE shall, upon request of COA, and at no cost to COA, make such records available to COA for inspection at a location within said 75 mile radius. Such records shall be available for five (5) years after the latest of:

- (a) delivery of the WORK;
- (b) termination of the AGREEMENT; or
- (c) resolution of any pending issues between COA and LAS POSITAS COLLEGE with respect to the AGREEMENT.

LAS POSITAS COLLEGE agrees to allow interviews of any of its employees who might reasonably have information related to such records and to otherwise assist COA in its auditing procedures at no cost to COA. The provisions of this section shall be specifically enforceable.

9.3 Return Documents

If LAS POSITAS COLLEGE has accepted any forms or other writings on COA's behalf, those forms and writings shall be returned to COA at the end of the AGREEMENT PERIOD or upon earlier termination of the AGREEMENT, at no cost to COA.

9.4 Evaluation

In accordance with procedures established by COA, LAS POSITAS COLLEGE's performance under the AGREEMENT will be evaluated. The evaluation shall include quality and adequacy of performance and whether performance is timely. Evaluation records shall be kept by COA and may be used in future selection of contractors.

9.5 NOTICE

PARTIES shall provide notice ("NOTICE") to each other in the form of a writing sent by certified mail with return receipt requested or by overnight courier or delivery service with

signature required, to the notice contact specified in Exhibit F—Notice Contacts. NOTICE will be deemed given on the date of receipt by the designated recipient.

10 MODIFICATION OF AGREEMENT

10.1 AUTHORIZED AGENTS

Each PARTY shall specify at least one agent with authority to modify the AGREEMENT (“AUTHORIZED AGENT”) in Exhibit E Authorized Agents.

10.2 Modifications

No modification, including but not limited to amendments, limitations, waivers, change orders, and supplements, shall bind either PARTY unless it is in writing and signed by the AUTHORIZED AGENTS of both PARTIES. The PARTIES expressly recognize that COA personnel who are not AUTHORIZED AGENTS cannot order or approve additions, deletions, or revisions in the WORK (“CHANGES”). Failure of LAS POSITAS COLLEGE to secure proper authorization for CHANGES shall constitute a waiver of any and all right to adjustment in payment or delivery timetable due to such unauthorized CHANGES, and LAS POSITAS COLLEGE thereafter shall be entitled to no compensation or reimbursements whatsoever for the performance of such CHANGES.

10.3 Renewal

Upon the mutual agreement of PARTIES, this AGREEMENT may be renewed, contingent upon funding. Renewal of the AGREEMENT shall be authorized in writing by AUTHORIZED AGENTS of both PARTIES. Renewals shall include all terms of the AGREEMENT unless expressly modified in the renewal contract.

10.4 Provision of Reports

Notwithstanding any other provision in the AGREEMENT, LAS POSITAS COLLEGE shall deliver any report requested by COA during the AGREEMENT PERIOD that LAS POSITAS COLLEGE agrees, either orally or in writing, to provide. Failure by LAS POSITAS COLLEGE to submit the report within the time frame agreed upon by both PARTIES will be considered a breach of the AGREEMENT. LAS POSITAS COLLEGE shall provide COA with status reports, at no cost to COA, upon NOTICE of a request by COA.

11 ASSIGNMENT

LAS POSITAS COLLEGE may neither assign the AGREEMENT, in whole or in part, nor any money payable under the AGREEMENT without COA’s prior written consent. Any such assignment without COA’s prior written consent shall be null, void, and of no force and effect whatsoever. COA reserves the right to assign the AGREEMENT to an affiliate of or contractor of COA with the prior written consent of LAS POSITAS COLLEGE which shall not be unreasonably withheld, provided that at any time after LAS POSITAS COLLEGE has been paid

in full for work then provided, COA may, without the consent of LAS POSITAS COLLEGE, assign the AGREEMENT to an affiliate or a contractor of COA upon NOTICE to LAS POSITAS COLLEGE.

11.1 Prohibition Against Outside Agreements

COA and LAS POSITAS COLLEGE shall not enter into agreements related to products and/or services of this contract with any out-of-state agency or organization. Any out-of-state agency or organization shall negotiate with the California Department of Education for products and/or services pertaining to this contract.

12 TERMINATION

AGREEMENT shall terminate upon completion by LAS POSITAS COLLEGE of the obligations listed in Section 4 or by the TERMINATION DATE, whichever occurs first. This AGREEMENT may be terminated by either party upon thirty (30) days written notice. AGREEMENT may also be cancelled immediately by mutual written consent.

12.1 Termination for Cause

COA may terminate performance under the AGREEMENT, in whole or in part, should LAS POSITAS COLLEGE commit a material breach. If COA elects to terminate the AGREEMENT for cause, COA shall provide NOTICE to LAS POSITAS COLLEGE of its breach and of the extent to which performance shall be terminated. LAS POSITAS COLLEGE shall immediately upon receipt of said NOTICE cease performance per the terms of the NOTICE and mitigate damages.

12.2 Payment Obligations

In the event AGREEMENT is terminated prior to completion of the project, COA shall pay LAS POSITAS COLLEGE the reasonable costs incurred by LAS POSITAS COLLEGE to the time of the termination.

12.3 Suspension of Performance

COA may suspend, delay, or interrupt performance, in whole or in part, for such periods of time as COA may determine in its sole discretion. LAS POSITAS COLLEGE shall immediately upon receipt of NOTICE of such decision cease performance per the terms of the NOTICE and mitigate damages.

12.4 Termination for Convenience

COA may terminate performance of the AGREEMENT, in whole or in part, for convenience upon its determination that such termination is in COA's best interests. LAS POSITAS COLLEGE shall immediately upon receipt of NOTICE of such decision cease performance per the terms of the NOTICE and mitigate damages. For portions of performance that are

terminated, LAS POSITAS COLLEGE shall be entitled to be paid for WORK satisfactorily performed to the termination date and for reasonable costs associated with the termination, but may recover no other cost, damage, or expense.

12.5 Termination for Illegality

COA may terminate performance of the AGREEMENT in whole or in part for illegality immediately upon its determination that an activity or operation supported by the AGREEMENT is no longer lawful for reasons including but not limited to court decision, legislative action, administrative decision, or advice of counsel. Upon receipt of NOTICE of termination or reduction based on a finding of illegality, LAS POSITAS COLLEGE shall immediately cease performance of such activity and mitigate damages. LAS POSITAS COLLEGE shall be entitled to be paid for WORK satisfactorily performed to the termination date and for reasonable costs associated with the termination, but may recover no other cost, loss, damage, or expense.

12.6 Tort Claims Act

No provision of the AGREEMENT shall alter the requirements of the Tort Claims Act, California Government Code Section 810 et seq.

12.7 Forum Selection

The exclusive venue for all litigation arising from or relating to the AGREEMENT shall be in Alameda County, California.

12.8 Cumulative Remedies

The remedies provided in the AGREEMENT are cumulative. A PARTY who exercises a right or remedy will not be precluded from asserting any other right or from seeking any other remedies available to that party.

12.9 No Special Damages

Notwithstanding any other provision, in no event shall COA be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including but not limited to lost profits or revenue, arising out of or in connection with the AGREEMENT.

12.10 Reserve Right to Offset

COA reserves the right to offset the reasonable cost of all damages caused to COA against any outstanding invoices or amounts owed to LAS POSITAS COLLEGE.

12.11 Statutes of Limitation

As between the PARTIES to the AGREEMENT, any applicable statute of limitations for any act or failure to act shall commence to run on the date of COA's issuance of the final certificate for payment, or termination of the AGREEMENT, whichever is earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause.

12.12 Course of Dispute

Unless COA gives NOTICE to stop work or of its intent to terminate this AGREEMENT, nothing in the AGREEMENT shall allow LAS POSITAS COLLEGE to discontinue the WORK during the course of any dispute, and LAS POSITAS COLLEGE'S failure to continue the WORK during any and all disputes shall be considered a material breach of the AGREEMENT.

13 INTERPRETATION

13.1 Integration

It is mutually understood and agreed that this AGREEMENT, the Exhibits, and any documents, provisions of law or COA policies attached or referenced to herein are incorporated herein by reference and together serve as the final, complete, and exclusive agreement of the PARTIES, setting out the entire intention of the PARTIES. Any and all prior agreements or representations are superseded hereby. No evidence of alleged prior dealings, usage of trade, or course of dealing or of performance not specifically and in terms set out herein shall be deemed in any sense relevant to supply any unexpressed term, to supplement or qualify this writing, or to engraft thereon any stipulation or obligation different from, or inconsistent with, law or with the express provisions hereof. No oral evidence of allegedly consistent additional terms be admissible without a specific preliminary finding by the court or arbitrator that this contract is ambiguous and in what respect. All oral contracts and representations have been reduced to writing and are included in the AGREEMENT.

13.2 Defined Terms

Each term that is defined in the AGREEMENT shall have the same meaning throughout the AGREEMENT.

13.3 Governing Law

The AGREEMENT shall be deemed to have been executed in Oakland, Alameda County, California. Enforcement of the AGREEMENT, including arbitration, shall be governed by, and construed and enforced in accordance with, the state, and federal laws in effect in the Oakland, Alameda County, California, including but not limited to California Government Code Section 818, but excluding California's conflict of laws principles that would cause the application of laws of any other jurisdiction.

13.4 Severability

Should any provision, or part thereof, of the AGREEMENT be determined at any time to be unenforceable or in contravention of law, then the remaining provisions, and the remainder of such provision, shall be enforceable to the fullest extent permitted by law and construed to give effect to the intent of the AGREEMENT to the fullest extent possible.

13.5 Titles of Provisions

The titles given to the articles, sections, and subsections of the AGREEMENT are for ease of reference only and shall not be used in the construction or interpretation of the AGREEMENT or relied upon or cited for any other purpose.

13.6 No Third-Party Beneficiaries

Except as expressly provided, nothing in the AGREEMENT shall operate to confer rights or benefits on persons or entities that are not a party to the AGREEMENT.

13.7 LAS POSITAS COLLEGE Is Independent of COA

This AGREEMENT is by and between two independent agencies and is not intended to and shall not be construed to create the relationship of agent, servant, employee, joint venture, or association. LAS POSITAS COLLEGE and its officers, agents, and employees are not entitled to participate in any pension, insurance, bonus, or similar benefits COA provides its COA employees. LAS POSITAS COLLEGE shall not sign contracts on behalf of or otherwise bind COA.

13.8 Sovereign Immunity Reserved

Nothing herein shall be construed to waive or limit COA's sovereign immunity or any other immunity from suit provided by law.

13.9 No Waiver of Performance

The failure of COA or LAS POSITAS COLLEGE to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of the AGREEMENT, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right as to further performance. No waiver, properly authorized and in writing, of any breach of any provision shall be construed as a waiver of any continuing or succeeding breach of such provision, a waiver or modification of the provision itself, or a waiver or modification of any right under the AGREEMENT, unless the waiver so states.

14 DOCUMENTS INCORPORATED

The AGREEMENT comprises the general provisions set out in these articles as well as all exhibits:

EXHIBIT A: WORK PLAN

EXHIBIT B:	PRICING AND PAYMENT SCHEDULE
EXHIBIT C:	APPLICABLE LAW, REGULATIONS, GUIDELINES AND POLICIES
EXHIBIT D:	STATE “CONTRACTOR CERTIFICATION CLAUSES”
EXHIBIT E:	AUTHORIZED AGENTS
EXHIBIT F:	NOTICE CONTACTS

Sec. 95.36 Intangible property.

- a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DOL reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize to do so.
- b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, “Rights to inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”
- c) DOL has right to:
 - 1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and
 - 2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
- d)
 - 1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal government in developing an agency action that has the force and effect of law, the DOL shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under FOIA. If the DOL obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).
 - 2) The following definitions apply for purposes of this paragraph (d):
 - (i) Research data is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This “recorded” material excludes physical objects (e.g., laboratory samples). Research data also do not include:
 - A. Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

B. Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) Published is defined as either when:

A. Research finding are published in peer-reviewed scientific or technical journal; or

B. A Federal agency publicly and officially cites the research findings in support of an agency that has the force and effect of law.

(iii) Used by the Federal Government in developing an agency action that has the force and effect of law is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect law.

e) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the grant officer. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of Sec. 95.34(g).

15 EXECUTED

15.1 Authority.

Signing of the AGREEMENT has been done in compliance with Board approval as outlined in the Board Policies for the COA Community College District. An AUTHORIZED AGENT for each PARTY shall sign.

15.2 Executed.

The PARTIES have caused the AGREEMENT to be executed effective as of the EFFECTIVE DATE.

LAS POSITAS COLLEGE ACCEPTS AND AGREES:

Signature: _____

Print Name: Lorenzo Legaspi

Title: Vice Chancellor, Business Services

Date: _____

COA ACCEPTS AND AGREES:

Signature: _____

Print Name: _____

Title: _____

Date: _____

APPROVED AS TO LEGAL FORM:

Signature: _____

Print Name: _____

Title: _____, Peralta Community College District

Date: _____

EXHIBIT A: WORK PLAN

PERALTA COMMUNITY COLLEGE DISTRICT, COLLEGE OF ALAMEDA
WORKFORCE INVESTMENT PARTNERSHIP
ECONOMIC DEVELOPMENT AND WORKFORCE PREPARATION DIVISION
CHANCELLOR’S OFFICE OF THE CALIFORNIA COMMUNITY COLLEGES.
JOB DEVELOPMENT FUNDS GRANT NO. 10-336

Scope of Work: Las Positas College (Las Positas College)

Budget: \$28,000

Duration: 3/1/2011 to 6/30/2012

In order to support the goals and objectives of the Direct Support Workers Career Ladder Training and Employment Project, Las Positas College will be responsible for the following services:

1. Act as the primary training provider for 2 (two) cohorts of incumbent workers in Supervisor Skills upgrade training.
 - a. Developing the curriculum for the Frontline Supervision Management Course in the Developmental Disabilities Sector
 - b. Working with the Project Director and CDSN to enroll no less than 40 students in the training.
 - c. Working to ensure that no less than 40 students complete the training
 - d. Working to ensure that no less than 34 incumbent workers are promoted to, retained in, or promoted from the frontline supervisor position.
 - e. Meeting with Community Curriculum Advisory Committee to ensure that the curriculum responds to training needs of employers, trainees, and individuals with developmental disabilities to whom support is provided in the DD sector.
 - f. Providing 3 units of transferable credits for completion of the course.
2. Participate in ongoing activities of the Project Steering Committee and the Community Advisory Board to ensure consistent achievement of grant objectives.
3. Work with Career Ladders Project, Consumer Directed Services Network, and other project partners to Develop Career Ladder and training map for the Developmental Disabilities Sector.

Name, Title
COA Community College District

Date

Name, Title
LAS POSITAS COLLEGE

Date

EXHIBIT B: PRICING AND PAYMENT SCHEDULE

As full compensation for all WORK contemplated by the AGREEMENT, LAS POSITAS COLLEGE shall be recompensed by total payment which shall not exceed \$28,000 Fiscal Years 2011 and 2011/2012.

Invoicing:

1. Invoices shall include the California Department of Education agreement number.
2. Invoicing must comply with the State Contracting Manual:
 - (a) State Contracting Manual, Chapter 3, Section 3.06 –See Exhibit F—Agreements with Other Governmental Entities and Their Auxiliaries
 - (b) State Contracting Manual, Chapter 7, Section 7.30, summarized below:
 - A. If payment is on a cost-reimbursement basis, the following items should be included and all unit rates must be extended and totaled (PCC § 10371[C]):
 1. Personal service costs showing individual or position rates per unit of time
 2. Fringe benefits costs citing actual benefits or a percentage of personal services costs
 3. Operating expenses including rent and supplies
 4. Equipment costs specifying equipment to be bought and the disposition of equipment at the end of the contract
 5. Travel expenses and per diem rates set at the rate specified by the Department of Personnel Administration for similar employees or verification supplied that such rates are not available to the contractor
 6. Overhead
 7. Other specific breakdown required
 - B. A consultant services contract must contain the above items. (PCC § 10371(c))
 - C. If payment is based on a lump sum or fixed price for the total project, the contractor is paid for an agreed upon result.
3. \$8,000 for Curriculum Development in FY 2011 (See Budget Detail)
4. \$12,000 for Instructional Costs in FY 2011/2012 (See Budget Detail)
5. \$8,000 for textbooks in FY 2011/2012 (see Budget Detail)

EXHIBIT C: APPLICABLE LAW, REGULATIONS, GUIDELINES AND POLICIES

- Public Law 101-336 - American with Disabilities Act (ADA) of 1990 (42 USC 12101 et seq.)
- Public Law 104-156 (Single Audit Act Amendments of 1996)
- Public Law 105-17 - Individuals with Disabilities Education Act (IDEA)
- Title VII of Civil Rights Act of 1964 as amended by the Civil Rights Act of 1991
- 29 U.S.C. 1001 et seq. (Employee Retirement Income Security Act of 1974)
- 40 U.S.C. 276a et seq. (Davis Bacon Act)
- 40 U.S.C. 276a-a7 (Copeland Anti-Kickback Act)
- 5 CFR 733 Hatch Act
- 28 CFR 35 - Nondiscrimination on the Basis of Disability in State and Local Government
- 29 CFR 5 (Department of Labor Regulations)
- 34 CFR 74 – Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations
- 34 CFR 76 – State-administered Programs
- 34 CFR 77 – Definitions that Apply to Department Regulations
- 34 CFR 79 – Intergovernmental Review of Department of Education Programs and Activities
- 34 CFR 80 – Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- 34 CFR 81 - General Education Provisions Act—Enforcement
- 34 CFR 82 – New Restrictions on Lobbying
- 34 CFR 85 – Governmentwide Debarment and Suspension (Nonprocurement)
- 34 CFR 86 – Drug and Alcohol Abuse Prevention
- 34 CFR 97 – Protection of Human Subjects
- 34 CFR 100 – Nondiscrimination under Programs Receiving Federal Assistance through the Department of Education Effectuation of Title VI of the Civil Rights Act of 1965
- 34 CFR 104 – Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance
- 34 CFR 106 – Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance
- 34 CFR 110 – Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance
- 34 CFR 400 – Vocational and Applied Technology Education Program—General Provisions
- 34 CFR 406 – State-administered Tech-Prep Education Program
- 37 CFR 401 – Rights to Inventions Made by Nonprofit Organizations and Small Business firms Under Government Grants, Contracts, and Cooperative Agreements
- 2 CFR 230 (OMB Circular A-122) – Cost Principles for Nonprofit Organizations
- 2 CFR 225 (OMB Circular A-87) – Cost Principles of State, Local, and Indian Tribal Governments
- Circular A-133 (Office of Management and Budgets {OMB}) Audits of States, Local Governments and Non-Profit Organizations

- General Services Administration - Federal Acquisition Regulation (Guidance for Purchasing and Contracting)
- Grant Application and Budget Instrument (GABI)
- CA Code of Regulations, Title II, Chapter 5, Section 8107, Non-discrimination Clause
- California Code of Regulations Title II Subchapter I (CA Department of Personnel Administration Regulations)
- California Code of Regulations, Title 2, Division 6 (sections 18109-18997). California Fair Political Practices Commission - Political Reform Act of 2002
- CA Education Code Section 45125.1 - Fingerprinting and Background Checks
- California Government Code Sec. 54950 et seq. (Ralph M. Brown Act)
- California Labor Code
- California Public Contract Code Sections 10410 and 10411 – Conflict of interest with current and former state employees
- California Department of Education (CDE)/CDD Funding Terms and Conditions and Program Requirements for Child Development Programs
- Any and All Other Appropriate and Required Laws, Regulations, Policies and Procedures for Tech Prep Programs.

EXHIBIT D: STATE “CONTRACTOR CERTIFICATION CLAUSES”

(California Form: CCC-307)

CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE:

Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS:

Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee who works on the proposed Agreement will:
 - 1) receive a copy of the company's drug-free workplace policy statement; and,
 - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:

Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT:

Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS:

Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

- a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
- b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC LAS POSITAS COLLEGES:

For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

8. CONFLICT OF INTEREST:

Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

- a. No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- b. No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

- a. For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- b. For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

9. LABOR CODE/WORKERS' COMPENSATION:

Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

10. AMERICANS WITH DISABILITIES ACT:

Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

11. CONTRACTOR NAME CHANGE:

An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

12. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

- a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
- b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.
- c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

13. RESOLUTION:

A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

14. AIR OR WATER POLLUTION VIOLATION:

Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

15. PAYEE DATA RECORD FORM STD. 204:

This form must be completed by all contractors that are not another state agency or other governmental entity.

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed above as Exhibit D. This certification is made under the laws of the State of California.

Contractor/Bidder Firm Name (Printed) Las Positas College	Federal ID Number
By (Authorized Signature)	
Printed Name and Title of Person Signing Lorenzo Legaspi, Vice Chancellor, Business Services	
Date Executed	Executed in the County of

EXHIBIT E: AUTHORIZED AGENTS

COA'S AUTHORIZED AGENTS

Name _____
Title _____
Address _____

Telephone _____
Facsimile _____
Other _____

Name _____
Title _____
Address _____

Telephone _____
Facsimile _____
Other _____

LAS POSITAS COLLEGE'S AUTHORIZED AGENTS

Name Lorenzo Legaspi
Title Vice Chancellor, Business Services
Address 5020 Franklin Drive
Pleasanton, CA
94588
Telephone (925) 485-5203
Facsimile _____
Other _____

Name _____
Title _____
Address _____

Telephone _____
Facsimile _____
Other _____

EXHIBIT F: NOTICE CONTACTS

COA'S NOTICE CONTACT

Name
Title
Address
Telephone
Facsimile
Other

LAS POSITAS COLLEGE'S NOTICE CONTACT

Name
Title
Address
Telephone
Facsimile
Other

STATE'S PROJECT MONITOR

Name Erin Larson
Title Program Assistant II
Address 1102 Q Street, 4 th Floor
Sacramento, CA 95811
Telephone 916-327-5884
Facsimile
Other (e-mail) elarson@cccco.edu