

CHABOT-LAS POSITAS COMMUNITY COLLEGE District
and the
OCCUPATIONAL SAFETY COUNCILS OF AMERICA
AGREEMENT FOR WORK AND SERVICES

This AGREEMENT FOR WORK AND SERVICES is made and entered into as of this _____ day of _____, 2015, by and between the CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT, (hereinafter referred to as District) having its principle place of business located at 7600 Dublin Boulevard, Third Floor, Dublin, CA 94568, and the OCCUPATIONAL SAFETY COUNCILS OF AMERICA (hereafter referred to as Contractor), having its principle place of business located at 455 East Carson Plaza Drive, Carson, CA 90746.

WHEREAS, District conducts workforce development activities in cooperation with other entities as a part of District's Economic Development department's offerings (Program);
and

WHEREAS, Contractor wishes to provide such activities as the parties may hereafter agree upon, and offer other occupational skills assistance in conjunction with District's Program that will allow the Contractor's students to receive Services;

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

I. SCOPE AND SERVICES

District and Contractor shall work collaboratively to provide workforce development Services. Contractor desires to make these Services available throughout its calendar year to individuals seeking to improve their knowledge of workplace skills and to develop required skills upgrades within their occupations.

II. PROGRAM DIRECTOR

Contractor shall designate a Program Director to oversee and facilitate implementation of this Agreement.

Program Director shall have the following responsibilities:

- A. To act as principle contact to plan and coordinate all activities within Contractor's organization.
- B. To ensure Program offerings and appropriate contract arrangements are in place at least fourteen (14) days prior to the Program start date and have been approved by both parties.
- C. To collaborate in establishing a schedule of activities.
- D. To pursue and maintain excellence in Program and outreach quality.

III. CONTRACTOR RESPONSIBILITIES

Contractor shall have the following responsibilities:

A. Program.

1. Scheduling – Work jointly with District to build a schedule of Program offerings for the population served by Contractor.
2. Recruitment – Act as primary recruiter for program, working with government agencies and other recruiting and staffing sources to source students for the Program.

B. Classroom.

1. Venue – Provide a classroom at a Contractor location, on or off-site, with appropriate space, seating, lighting, and other environmental elements conducive for learning.
2. Site Management – Provide on-site Program management, working to resolve any issues that may arise while a Program is being conducted.

C. Paperwork

1. Gather back-up documentation from students attending Program as needed, review for qualifications, forward to District prior to the first day of the Program.
2. Administer evaluations, daily sign-in sheets, demographic surveys and other documentation as required by District for each class.
3. Create accounting statement by documenting number of participants in each Program, grant or other funding source revenue, fees paid, expenses and revenue sharing; and forwarding to District within 30 days of Program completion.

IV. DISTRICT RESPONSIBILITIES

District shall have the following responsibilities:

A. Program.

1. Program Scheduling – Work jointly with Contractor to build a schedule of Program offerings for the population served by Contractor.

2. Programming – Ensure that Program offerings are properly scheduled for future marketing and timely registration.
3. Program Preparation.
 - i. Work with Contractor to source and/or create materials for instruction, accreditation, and certification for District Program.
 - ii. Supply all Program materials (handouts, books, etc.), and any other collateral materials required for Program, unless otherwise agreed upon between both parties.
4. Documentation.
 - i. Prepare required District certifications as appropriate.
 - ii. Provide Program documentation including evaluations, summaries and daily sign-in sheets as required and as modified from time to time.
 - iii. Receive and review Program statements, working with Contractor on any discrepancies. Issue payment for profit-sharing due Contractor within 45 days of receipt of Program statements.

B. Students.

1. Recruitment – As appropriate, refer students to the Program by contacting Contractor for information and screening.
2. Registration – Provide enrollment and registration services for students enrolled in Program.
3. Provide students with a District Certificate of Completion upon successful completion of Program.
4. Implement, maintain and provide student records to students and to others, such as potential employers, as requested by students.
5. Collect tuition and/or fees.
6. Respond to student inquiries and complaints promptly, with a copy to Contractor Program Director.

C. Other.

1. Maintain quality control over the provision of Program and the materials used.
2. Cooperate with Contractor in the delivery of Services through this Agreement.

3. Perform program administration in accordance with District's standards for administrative and financial accountability and reporting.

V. COST AND PROFIT SHARING – OPEN ENROLLMENT CLASSES

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

VI. COST AND PROFIT SHARING – GRANT-FUNDED CLASSES

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

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

VII. COST AND PROFIT SHARING – SPECIAL PROGRAMS

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

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 nor damage to any data, equipment, or other property brought upon premises used or occupied by either party, or which may be delivered to either party by any person in connection with this Agreement. Both Contractor and District, 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, CONTRACTOR AND DISTRICT, 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 DISTRICT TO CONTRACTOR TO BE USED TO PROVIDE INSTRUCTION TO OTHER PERSONS PURSUANT TO THIS AGREEMENT, CONTRACTOR WILL BE RELYING UPON INFORMATION, DATA, AND MATERIALS FURNISHED TO CONTRACTOR BY DISTRICT, AND CONTRACTOR 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 Agreement is effective April 22, 2015, and will continue until June 30, 2016. The Agreement may be extended if agreed to in writing by both parties. Either party may cancel this Agreement with 30 days written notice to the other 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 non-breaching party, if the breaching party, upon 10 days written notice, cannot cure such breach.
- B. Should the Agreement 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 Program as 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. Contractor shall defend, indemnify and hold District 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 Contractor, its officers, employees or agents.
- B. District shall defend, indemnify and hold Contractor 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 District, 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 District or Contractor 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 District will be sent to:

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

All notices to Contractor will be sent to:

Harvey Jass
Chief Operating Officer
OCCUPATIONAL SAFETY COUNCILS OF AMERICA
455 East Carson Plaza Drive
Carson, CA 90746
Phone: (562) 624-2720
Fax: (562) 624-2724
E-mail: Harvey@osca.com

- B. Severability. In the event that any portion of this Agreement 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 Agreement.
- C. Entire Agreement. This Agreement constitutes the entire understanding between District and Contractor with respect to the subject matter hereof and shall supersede all prior written or oral agreements, if any, between District and Contractor 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 Contractor as to the performance of any contractual duty or obligation agreed to be performed by Contractor 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.

Chabot-Las Positas Community College District
Occupational Safety Councils of America

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

CHABOT-LAS POSITAS COMMUNITY
COLLEGE DISTRICT

OCCUPATIONAL SAFETY COUNCILS
OF AMERICA

Lorenzo Legaspi
Vice Chancellor, Business Services

Harvey Jass
Chief Operating Officer

Date

Date