

MEMORANDUM OF UNDERSTANDING
between
CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT'S
OSHA TRAINING CENTER
and the
CENTRAL CALIFORNIA BUILDERS EXCHANGE

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into as of this _____ day of _____, 2016, by and between the CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT'S OSHA TRAINING CENTER, (hereinafter referred to as CLPCCD OTC) having its principle place of business located at 7600 Dublin Boulevard, Suite 102, Dublin, CA 94568, and the CENTRAL CALIFORNIA BUILDERS EXCHANGE (hereafter referred to as CCBE), having its principle place of business located at 1244 N. Mariposa Street, Fresno CA 93703.

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

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

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

I. SCOPE AND SERVICES

CLPCCD OTC and CCBE shall work collaboratively to provide cost effective official Department of Labor/OSHA Courses and other safety-related courses through both open enrollment and under contract with third parties. CCBE desires to make these Courses available to its members and individuals seeking to improve their knowledge of workplace safety, and to develop required safety skills within industries affected by OSHA requirements. CCBE's catchment area lies within that portion of Region IX, serving the Central Valley region in California.

II. PROGRAM DIRECTOR

CCBE 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 principle 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 October of each year that substantially covers the entire subsequent calendar year.
- D. To pursue and maintain excellence in course and instruction quality.

III. CCBE RESPONSIBILITIES

CCBE shall have the following responsibilities:

- A. Courses.
 1. Scheduling – Work jointly with CLPCCD OTC to build a schedule of course offerings for the population served by CCBE.
- B. Classroom.
 1. Venue – Provide a classroom at a CCBE location, on or off-site, with appropriate space, seating, lighting, and other environmental elements conducive for learning.
 2. Access – Classroom will be fully accessible 1 hour prior to scheduled start time. The room shall be reserved for CLPCCD OTC the entire scheduled class period and 1 hour following class end time without interruption.
 3. Classroom Set-up, Cleaning and Maintenance - Classroom will be properly set up prior to the class including but not limited to classroom style configuration of tables and chairs, equipment, etc. Janitorial services and building maintenance are the responsibility of CCBE.
 4. Equipment – Equipment in working condition shall be provided in each classroom to include a projector, screen, speakers, white board or flip chart, tables and chairs for each student. Rental or replacement costs will be the responsibility of CCBE.

5. Site Management – Provide on-site management to receive advance shipment of class materials and deliver to classroom. Site management will be available to open and lock facility and to resolve any issues that may arise while a course is being conducted.
 6. Parking – On-site parking shall be provided for instructor and students at no additional cost.
 7. Storage and Office Space – A locked, dedicated space will be provided for instructor use and the storage of training materials, props, etc.
- C. Instructors –Identify prospective instructional staff and refer them to CLPCCD OTC for consideration.
- D. Marketing.

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

1. Creation and distribution of CLPCCD approved marketing collateral to include course descriptions, flyers, schedules of courses and other promotional materials as needed.
2. Electronic, internet and social media marketing.
3. Direct marketing to public/private industry, association, trade and community groups.
4. Identification of potential students and employers.

IV. CLPCCD OTC RESPONSIBILITIES

CLPCCD OTC shall have the following responsibilities:

- A. Courses.
1. Course Scheduling – Work jointly with CCBE to build a schedule of Course offerings for the population served by CCBE.
 2. Programming – Ensure that Courses are properly scheduled for future course marketing and registration.
 3. Course Preparation.

- i. Work with CCBE to ensure that appropriate details regarding course delivery have been attended to including but not limited to, recruiting, training, retraining, and employing any of the following:
 1. Instructors.
 2. Classrooms.
 - ii. Source materials and standards for instruction, accreditation, and certification for Courses that originate with United States Department of Labor (DOL)/OSHA.
 - iii. Supply all course materials (handouts, books, etc.), and any other collateral materials required for OSHA-numbered Courses, unless otherwise agreed upon between both parties.
4. Documentation.
- i. Prepare final CLPCCD OTC and DOL certifications and completion cards as appropriate.
 - ii. Provide Course documentation including evaluations, summaries and daily sign-in sheets as required by OTI and as modified from time to time.
 - iii. Receive and review Course statements, working with CCBE on any discrepancies. Issue payment for profit-sharing due CCBE within 45 days of receipt of Course statements.

B. Faculty.

1. Except where otherwise agreed upon, CLPCCD OTC will be responsible for recruiting and hiring instructors to teach OSHA-numbered classes provided at CCBE facilities. CCBE may propose its own instructors to teach courses to be held at CCBE facilities, subject to CLPCCD OTC's approval of their professional credentials and relevant experience, which approval shall not be unreasonably withheld.
2. Prepare and process instructor payments as appropriate for Courses taught, including issuance of IRS 1099 forms.

C. Students.

1. Registration – Provide enrollment and registration services for students enrolled in Courses.

2. Provide students with a CLPCCD OTC Certificate of Completion upon successful completion of Course.
3. Implement, maintain and provide student records to students and to others, such as potential employers, as requested by students.
4. Collect tuition and or fees.
5. Respond to student inquiries and complaints promptly.

D. Other.

1. Maintain quality control over the provision of official Department of Labor / OSHA-numbered Courses and the materials used in these Courses.
2. Cooperate with CCBE in the delivery of all training offered through this Agreement.
3. Perform program administration in accordance with CLPCCD OTC's standards for administrative and financial accountability and reporting.

V. COST AND PROFIT SHARING

- A. CLPCCD OTC shall register students and collect tuition fees for all open enrollment classes. Unless otherwise agreed upon, CLPCCD OTC is responsible for all costs, which includes but will not be limited to instructor pay, materials costs, etc. Indirect costs for the administration of this Agreement, except as expressly provided herein will not be considered a cost for any Course.
- B. Discounts or special pricing agreements must have prior approval by CLPCCD OTC.
- C. CCBE shall be entitled to 20% of the tuition fees collected for each student enrolled in a class conducted at a CCBE training facility.
- D. CCBE shall be entitled to a flat rate of \$250 for direct referrals of their members for private contract education courses to CLPCCD OTC. The referral must be made directly to CLPCCD OTC coordinator via email or other time/date stamped media. Referral fee does not apply if the member has already made contact with CLPCCD OTC regarding the contract education request, or is a current or previous client of CLPCCD.
- E. Profit sharing shall be calculated based on the amount collected for each class and be dependent on actual monies received.
- F. It is the responsibility of CCBE to invoice CLPCCD within two weeks for profit sharing monies due. Unless otherwise agreed upon, CLPCCD OTC shall send payment

to CCBE or CCBE's designee within 45 days of receipt of the final statement/invoice for each completed class.

- G. Payments will be made payable to the CENTRAL CALIFORNIA BUILDERS EXCHANGE, and sent to 1244 N. Mariposa Street Fresno, CA 93703.

VI. MUTUAL RESPONSIBILITIES.

A. Intellectual Property.

1. Each party shall provide the other with camera-ready copies of its logos and trademarks for use in their respective catalogs, flyers, and other promotional materials. The parties shall use such property solely for the purposes intended, and for no other purpose or usage.
2. Each party shall provide reasonable security for such property against loss, theft or, or misappropriation.
3. Upon the completion or termination of this Agreement, each party shall return to the other all unused copies of the other party's intellectual property, and any unused promotional materials bearing that party's trademark or other indicia of proprietary ownership, shall be destroyed, or disposed of in accordance with the obligated party's standard practices and procedures for handling and disposing of sensitive, and/or confidential materials.

B. Reconciliation and final accounting.

1. Upon completion or termination of this Agreement, each party shall provide the other with a financial statement with revenue and expenditures showing all days of service, all direct costs incurred in providing such services, all amounts paid, and any amounts claimed as due and owing to that party.
2. At a mutually agreeable time the parties shall meet and confer, and settle all claims between them. Except as otherwise provided herein, neither party shall claim any form of General and Administrative Costs, or indirect cost of any nature.

C. Course Cancellation.

1. The parties mutually agree to make all reasonable efforts to conduct every scheduled class; however, the parties understand and agree that continuation of all classes scheduled may not be feasible in every case. In the event that fewer than 10 students have enrolled in a scheduled class ("low enrollment"), or for other good and sufficient reasons, not later than one week 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:

- i. If the decision is made to go forward with a class, any shortfall in revenue received will be shared equally between the parties.
- ii. 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.

D. Discounts

2.

VII. 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 CCBE and CLPCCD OTC, 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, except where restricted by the CLPCCD Agreement with the United States Department of Labor (DOL)/OSHA.

VIII. DISCLAIMERS.

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

IX. TERM

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

X. 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 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.

XI. INDEMNIFICATION AND INSURANCE

- A. CCBE shall defend, indemnify and hold CLPCCD OTC 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 CCBE, its officers, employees or agents.

- B. CLPCCD OTC shall defend, indemnify and hold CCBE 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 OTC, 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.

XII. 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.

XIII. 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 instructorsservice of the non-employer party.

XIV. 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.

XV. GENERAL PROVISIONS

- A. Notices – All notices required to be given to CLPCCD OTC or CCBE 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 OTC 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 CCBE will be sent to:

CENTRAL CALIFORNIA BUILDERS EXCHANGE
Attn: Hilary Rauch
1244 N. Mariposa Street
Fresno, CA 93703
Phone: (559) 237-1831
Fax: (559) 264-2532
E-mail: Hilary@cencalbx.com

- 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 OTC and CCBE with respect to the subject matter hereof and shall supersede all prior written or oral agreements, if any, between CLPCCD OTC and CCBE 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 CCBE as to the performance of any contractual duty or obligation agreed to be performed by CCBE 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 _____ day of _____, 2015.

CHABOT-LAS POSITAS COMMUNITY
COLLEGE DISTRICT

CENTRAL CALIFORNIA
BUILDERS EXCHANGE

Lorenzo S. Legaspi
Vice Chancellor, Business Services

Hilary Rauch
Executive Director

Chabot-Las Positas Community College District
Central California Builders Exchange

Date

Date

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

Date