

AGREEMENT

between

CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT'S
OSHA TRAINING INSTITUTE EDUCATION CENTER

and

STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION
AIRPORTS DIVISION, DANIEL K. INOUE INTERNATIONAL
AIRPORT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 2020, by and between Chabot-Las Positas Community College District's OSHA Training Institute Education Center, (hereinafter referred to as CLPCCD OTIEC) having its principal place of business located at 7600 Dublin Blvd. Suite 102A Dublin, CA 94568, and **State of Hawai'i, Department of Transportation, Airports Division** (hereinafter referred to as **HDOTA**), having its principal place of business located at **Daniel K. Inouye International Airport, 400 Rodgers Blvd, Suite 700, Honolulu Hawai'i 96819.**

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

WHEREAS, HDOTA and CLPCCD OTIEC wish 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 OTIEC's Program that will allow the HDOTA students/employees and others to receive OSHA-Authorized Training, and prospectively leading to Certification by CLPCCD OTIEC if they meet CLPCCD OTIEC's requirements therefore;

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

I. SCOPE AND SERVICES

CLPCCD OTIEC and HDOTA shall work collaboratively to provide cost effective official Department of Labor/OSHA Courses and regionally relevant safety-related education through the use of HDOTA classroom facilities for open enrollment classes. This instruction will primarily be the Department of Labor/OSHA Courses that CLPCCD OTIEC is currently authorized to offer within its designated OSHA-Region IX service area. HDOTA desires to make these courses available throughout its calendar year to individuals seeking to improve their knowledge of workplace safety and health, and to develop required safety skills within industries affected by OSHA requirements.

II. POINT OF CONTACT

HDOTA shall designate a Point of Contact to oversee and facilitate implementation of this Agreement in cooperation with other appropriate administrators within their respective organizations.

Point of Contact shall have the following responsibilities:

- A. To act as principal contact to plan and coordinate all activities within their respective organization 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 1st of each year, that substantially covers the entire subsequent calendar year.
- D. To pursue and maintain excellence in facility, course and instruction quality.

III. HDOTA RESPONSIBILITIES

HDOTA shall have the following responsibilities:

- A. Courses.
 1. Scheduling - Work jointly with CLPCCD OTIEC to confirm availability of classroom space for the schedule of Course offerings in the area served by HDOTA.
 2. Course Materials – As needed, accept shipments of course materials (handouts, books, etc.), supplies, equipment and any other collateral materials for each Course supplied by CLPCCD OTIEC and place in designated training room prior to class.
- B. Classroom.
 1. Venue – Provide a classroom at a HDOTA location, with appropriate space, tables, seating, lighting, ventilation and other environmental elements conducive for learning.
 2. Site Management – Provide on-site management, working to resolve any issues that may arise while a course is being conducted and notify CLPCCD OTIEC as necessary.
- C. Faculty.
 1. Whereas, faculty/instructors are the responsibility of CLPCCD OTIEC, HDOTA shall notify CLPCCD OTIEC of any issues surrounding faculty/instructors that need to be addressed.
- D. Marketing.

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

1. Distribution of CLPCCD OTIEC approved marketing collateral to include course descriptions, flyers, schedules of course and other promotional materials as needed.

2. Electronic, internet and social media marketing.
3. Direct marketing to public and private industry, association, trade and community groups.
4. Identification of potential students and employers.

IV. CLPCCD OTIEC RESPONSIBILITIES

CLPCCD OTIEC shall have the following responsibilities:

A. Courses.

1. Course Scheduling -Work jointly with HDOTA to build a schedule of Course offerings for the population/area served by HDOTA.
2. Programming – Ensure that Courses are properly programmed for future marketing and registration.
3. Course Preparation.
 - a. CLPCCD OTIEC will be responsible for recruiting and hiring instructors to teach at HDOTA facilities.
 - b. Source materials and standards for instruction, accreditation, and certification originate with United States Department of Labor (DOL)/OSHA.
 - c. Supply all course materials and any other collateral materials required, unless otherwise agreed upon between both parties.
4. Documentation.
 - a. Prepare final CLPCCD OTIEC and DOL records, certifications and completion cards as appropriate.
 - b. Provide course documentation including evaluations, summaries and daily sign-in sheets as required by OSHA's Directorate of Training and Education and as modified from time to time.

B. Faculty.

1. Except where otherwise agreed upon, CLPCCD OTIEC is responsible for hiring and recruiting instructors to teach OSHA-authorized classes provided at HDOTA facilities.
2. Prepare and process instructor payments as appropriate for courses taught, including issuance of IRS forms.

C. Students.

1. Registration -Provide enrollment and registration services for all enrolled students.

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

D. Other.

1. Maintain quality control over the provision of official Department of Labor/OSHA Courses and materials used in these Courses.
2. Cooperate with HDOTA in the delivery of all training offered through this Understanding.

V. COST AND PROFIT SHARING

- A. CLPCCD OTIEC shall register students and collect tuition fees for all classes.
- B. HDOTA shall be entitled to a maximum of **2 seats** per each OSHA course taught at HDOTA at no charge to HDOTA or its students. The average cost per seat is \$795.00. The CLPCCD OTIEC reserves the right to cancel/reschedule any event. HDOTA will provide student registration information to CLPCCD OTIEC a minimum of 5 working days in advance of start date.
- C. HDOTA shall be entitled to 30% discount off the usual and customary rate for each student beyond the 2 seats provided at no charge, per class.

VI. MUTUAL RESPONSIBILITIES.

A. Intellectual Property.

1. Each party shall provide reasonable security for such property against loss, theft or, or misappropriation.
2. 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. 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 5 days prior or upon mutual agreement to the commencement of such scheduled class. Such efforts shall be made in good faith and every reasonable effort shall be made to ensure that their

decisions are concurrent, and in accordance with the following decisional criteria:

- a. If the decision is made to cancel a class, each party shall bear its own costs, and no funds will be due from either party to the other.

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 or damage to any data, equipment, or other property brought upon premises used or occupied by either party, or which may be delivered to either party by any person in connection with this Agreement. Both HDOTA and CLPCCD OTIEC, 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.

VIII. DISCLAIMERS.

- A. WITH RESPECT TO INFORMATION, DATA, OR MATERIALS TO BE FURNISHED TO PROSPECTIVE STUDENTS PURSUANT TO THIS AGREEMENT, HDOTA AND CLPCCD OTIEC, 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 OTIEC TO HDOTA TO BE USED TO PROVIDE INSTRUCTION TO OTHER PERSONS PURSUANT TO THIS AGREEMENT, HDOTA WILL BE RELYING UPON INFORMATION, DATA, AND MATERIALS FURNISHED TO HDOTA BY CLPCCD OTIEC, AND HDOTA 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 Agreement shall be deemed to be effective as of the date of the last signature on this Agreement. It

shall remain in effect for each successive calendar year, and shall renew annually unless otherwise terminated by either party.

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. HDOTA shall defend, indemnify and hold CLPCCD OTIEC 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 HDOTA, its officers, employees or agents.
- B. CLPCCD OTIEC shall defend, indemnify and hold HDOTA 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 OTIEC, 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 faculty service 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 OTIEC or HDOTA shall be given in writing either by personal delivery, first class postage prepaid, or by certified mail, return receipt requested, or by electronic mail, at the following addresses or at such other address as may be designated in writing by either party.

All notices to CLPCCD OTIEC 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
E-mail: jdozier@clpccd.org

All notices to HDOTA will be sent to:

Martinez Jacobs
Airports Chief
Hawaii Department of Transportation, Airports Division
Daniel K. Inouye International Airport
400 Rodgers Blvd., Suite 700
Honolulu HI 96819
Phone: (808) 838-8702
Email: Martinez.jacobs@hawaii.gov

- 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 CLPCCD OTIEC and HDOTA with respect to the subject matter hereof and shall supersede all prior written or oral agreements, if any, between CLPCCD OTIEC and HDOTA 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 Parties agreements hereunder. Nothing herein shall prevent or restrict the administrative reassignment by HDOTA as to the performance of any contractual duty or obligation agreed to be performed by HDOTA 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 Agreement, duly executed on this, the _____ day of _____, 2020.

CHABOT-LAS POSITAS COMMUNITY
COLLEGE DISTRICT

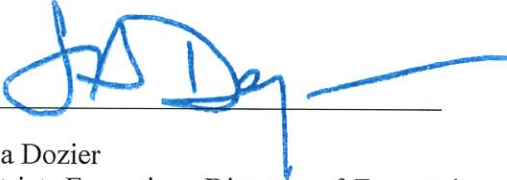
Daniel K. Inouye International Airport

Douglas Roberts
Interim Vice Chancellor, Business
Services

JADE T. BUTAY
Director
Hawaii Department of Transportation

Date _____

Date _____



Julia Dozier
District Executive Director of Economic
Development & Contract Education

Date 2/24/20