



FOUNDATION *for* CALIFORNIA  
COMMUNITY COLLEGES

**SITE LICENSE AGREEMENT**

**between**

**CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT**

**and the**

**FOUNDATION FOR CALIFORNIA COMMUNITY COLLEGES**

*Agreement No.00005776*

**SUMMARY**

Chabot-Las Positas Community College District (“DISTRICT”) grants a site license to the Foundation for California Community Colleges, a California nonprofit 501 (c)(3) corporation, (the “FOUNDATION”) for the use of Las Positas College (“COLLEGE”) facilities in support of the State of California, Department of Consumer Affairs, Bureau of Automotive Repair’s (“BAR”) Smog Check Referee and Student Technician Training Program.

**BACKGROUND**

BAR is the nation’s foremost automobile regulatory system. The FOUNDATION has entered into an agreement with BAR (the “BAR Agreement”) to operate, at multiple sites, a Smog Check Referee and Student Technician Training Program (the “Program”). The goal of the FOUNDATION is to help improve air quality in California, while training college students in critical technical services that provide economical solutions to citizens, consumers, and taxpayers related to vehicle ownership and a safer and healthier living environment. Accordingly, the Program will provide a network of referees to hear complaints from consumers who were unable to obtain smog certificates for their vehicles, negotiating reasonable results in those disputes, and train student technicians to perform the necessary technical services of California’s Smog Check Referee Program. Funds earned through the Program may be used by the FOUNDATION through grants to enhance the educational programs of the California Community College system.

**AGREEMENT**

DISTRICT hereby grants to the FOUNDATION a license to use the COLLEGE facilities and equipment necessary to conduct the Program (“Site License”). The effective date of this Site License is July 1, 2022. The term of this Site License is from July 1, 2022 through June 30, 2025.

The FOUNDATION and DISTRICT mutually agree to the following terms and conditions:

00005776\_Las Positas College  
Chabot-Las Positas Community College District

## **Article I Responsibilities of DISTRICT**

### **A. Site**

1. COLLEGE will provide a Site, as described in Attachment I “Site Requirements” attached hereto and incorporated by referenced, for a Smog Check Station at which the smog check referee will perform the functions described Attachment II “Referee Site Functions & Referee Duties” attached hereto and incorporated by reference.
2. The FOUNDATION and BAR will have ready access to the Site to install BAR automotive emissions testing equipment, office furniture, equipment and supplies, signage, and other appropriate items.
3. The FOUNDATION and BAR will have ready access to Site to make such modifications to Site as described in Attachment III “Site Modifications” attached hereto and incorporated by reference. All improvements to the structure, including the installation of equipment that is physically attached to, bolted to, or screwed to, or contained within the structure shall become property of the College. All additional requests for Site modifications shall be submitted in writing to the COLLEGE President or designee. The COLLEGE President or designee shall approve such requests in writing within thirty (30) calendar days from the date of the request. Such approval shall not be unreasonably withheld.
4. COLLEGE will provide the FOUNDATION and Program staff with open access to the Site on the days and times specified in Attachment I “Site Requirements,” during which the functions and duties of Attachment II “Referee Site Functions & Referee Duties” will be performed.
5. COLLEGE will maintain the Site in compliance with Attachment I “Site Requirements.” The surrounding land adjacent to the Site shall be the responsibility of COLLEGE.
6. COLLEGE will supply campus and area maps, directions, and other Site information to the FOUNDATION within ten (10) business days of execution of this Site License, and within ten (10) business days after the date of each subsequent request.

### **B. Personnel**

1. COLLEGE will have one (1) program representative (the “College Representative”), who will be the key point of contact between COLLEGE and the FOUNDATION. The College Representative will be readily available to communicate with the FOUNDATION by phone, letter, and electronic mail.

Kevin Kramer, Dean of Applied Technology  
3000 Campus Hill Drive  
Livermore, CA 94551  
(925) 424-1323  
[kmkramer@laspositascollege.edu](mailto:kmkramer@laspositascollege.edu)

## **Article II Responsibilities of the FOUNDATION**

### **A. Site**

1. Pursuant to the BAR Agreement, the FOUNDATION will provide equipment, office furniture and supplies, signage, and other items it deems necessary to administer the Program at the Site, including:
  - a. Testing and marketing equipment and supplies:
    - i. If COLLEGE is in an Enhanced Area of the state, or if COLLEGE is in a Basic Area of the state as defined in Attachment V “Definitions” attached hereto and incorporated by reference and provides to its students BAR 97 training, COLLEGE will give the FOUNDATION access to COLLEGE’S Emissions Inspection System.
    - ii. All Sites will be equipped with diagnostic equipment, tools, books, manuals, copy machine, desks, chairs, telephone answering machine, cash management equipment, and general office supplies for use by FOUNDATION staff.
    - iii. The FOUNDATION will manage the provision to COLLEGE of brochures and other pamphlets for the general public.
  - b. Appropriate computing and telecommunication lines and equipment at the Site, where necessary.
2. The FOUNDATION will procure and maintain throughout the entire life of this Agreement, General Liability/Property Damage insurance, including Garagekeepers Liability insurance, at three million dollars (\$3,000,000) combined single limit. The FOUNDATION will designate the DISTRICT, its Board of Trustees, and its officers, agents, representatives and employees as additional named insureds and will provide to DISTRICT appropriate Certificates of Insurance and endorsement.

### **B. Personnel**

1. The FOUNDATION will provide a Program Director to oversee the Program. The Program Director will be the primary contact of the College Representative. The Program Director will be readily available to communicate with the College Representative by phone, letter, and electronic mail.

Mark Weidinger  
Director, Smog Check Referee Program Operations  
Foundation for California Community Colleges  
1102 Q Street, Suite 4800  
Sacramento, CA 95814  
Phone: (559) 855-7640  
Fax: (559) 408-5592  
Email: [mweidinger@foundationccc.org](mailto:mweidinger@foundationccc.org)

2. The Referee is an employee of the FOUNDATION and will work with the designated College Representative in managing the Site.

**C. Fiscal Responsibilities**

1. Commencing on July 1, 2022, the FOUNDATION will pay to COLLEGE the sum of one thousand one hundred dollars (**\$1,100.00**) per month for the use of the Site and equipment as permitted herein. The fee will be due on the first day of each month during the term of this Site License.

The check should be made payable to:

Las Positas

and mailed to:

Attn: Kevin Kramer, Dean of Applied Technology  
3000 Campus Hill Drive  
Livermore, CA 94551

2. The FOUNDATION reserves the right to withhold the facilities equipment and licensing fee payments to COLLEGE if COLLEGE's performance does not comply with the terms of this Site License.
3. COLLEGE must allocate at least fifty (50) percent of the monthly fee directly to its automotive department or program.

**Article III General Provisions**

This Site License hereby also incorporates by reference Attachment IV "General Provisions."

SIGNATURE PAGE TO FOLLOW

In witness whereof, the Parties hereto have executed this Site License per the dates and signatures below:

**CHABOT-LAS POSITAS COMMUNITY  
COLLEGE DISTRICT**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**FOUNDATION FOR CALIFORNIA  
COMMUNITY COLLEGES**

By: *Mark Weidinger*  
Mark Weidinger (May 17, 2022 09:00 PDT)

Print Name: Mark Weidinger

Title: Director, Smog Check Referee Program  
Operations

Date: May 17, 2022

**FOUNDATION FOR CALIFORNIA  
COMMUNITY COLLEGES**

By: *Joseph Quintana*

Print Name: Joseph Quintana

Title: Chief Operating Officer

Date: May 17, 2022

## ATTACHMENT I

### Site Requirements

1. Access and Hours of Operation. COLLEGE will provide access to the Site for the days and hours specified below. COLLEGE will be responsible for opening any gate or exterior entrances to the Site in addition to opening automotive technology.

**Site will be open for Operation: Monday - Saturday, 7 am to 5 pm**

2. Automotive Lane. Access to an automotive bay/lane either in, or close to, automotive technology. If the Site is located in an Enhanced Area, access will be provided to a bay where the BAR 97 and dynamometer are located.
3. Office Space. Adequate space to close the automotive lane, where a desk, storage or file cabinet, bookshelf, and other equipment can be placed. Where possible, the furniture and equipment shall be located in a separate area that can be locked at the end of each day.
4. Site and Equipment Maintenance. COLLEGE will maintain the Site building and surrounding grounds. COLLEGE and the FOUNDATION will keep the facility clean at all times. If either party uses equipment owned by the other party, it will pay for the maintenance of the equipment proportionate to the use.
5. Parking. Two (2) parking spaces for waiting vehicles, one (1) suitable for handicapped access, will be provided close to the automotive bay. Parking for the Referee and student technicians will be arranged with COLLEGE, but need not be in immediate proximity to automotive technology.
6. Signage. The FOUNDATION will provide sandwich board signs and one (1) building sign to direct customers to the Site. The FOUNDATION will work with COLLEGE to ensure the signs meet the specifications required by COLLEGE.
7. Customer Waiting Area. The COLLEGE will provide space for a customer waiting area, or access to the campus lounge or cafeteria. The FOUNDATION will ensure that customers are restricted to the designated areas at all times.

**The customer waiting area is currently designated: in the Auto Tech Building Foyer**

8. Restrooms. COLLEGE will provide reasonable access to restroom facilities for FOUNDATION staff and customer use. The restroom facilities must meet ADA standards. COLLEGE will ensure regular maintenance and upkeep of the public restrooms, including keeping the restrooms stocked with adequate paper supplies.
9. Security. COLLEGE will specify what type of security is currently in place at the Site and what the basic security requirements are for COLLEGE. The FOUNDATION will supplement the security as deemed necessary by both parties.
10. Safety. COLLEGE and the FOUNDATION will ensure that Site is free from hazards to the public.
11. Availability. Pursuant to the BAR Agreement, COLLEGE will make Site available for training and others purposes at BAR's discretion.

## ATTACHMENT II

### **Referee Site Functions & Referee Duties**

The Smog Check Referee Program will provide a public service for motorists who need additional testing on their vehicles.

Referees assist motorists who are unable to obtain smog certificates for their vehicles from a Smog Check station. The Referee inspects and tests vehicles to determine whether the vehicle should be given a smog certificate, or whether it should be sent back to a Smog Check station for repairs. The Referee is responsible for providing information to motorists, Smog Check technicians, and others needing assistance.

The Referee actions will include testing vehicles on state-of-the-art diagnostic equipment, assisting customers, performing stationary vehicle inspection, recordkeeping, and data entry, as well as other services.

#### **Referee Duty Statement**

The Referee is responsible for the daily operations of the Site. In principle, these functions should be the same for all locations. The Referee's responsibilities include, but are not limited to, the following in accordance with the Smog Check Referee Program Policy and Procedure Manual:

1. Overseeing daily Site operations including all monetary transactions and deposits.
2. Maintaining an orderly flow of scheduled appointments.
3. Ensuring, with assistance from Program Director that there is adequate Site availability for motorists.
4. Obtaining equipment and office supplies.
5. Ensuring sufficient staffing of assistants during normal operating hours.
6. Interviewing Student Technicians and evaluating their performance. Applicants enrolled as students at COLLEGE will be given full priority for positions if they meet the established qualifications.
7. Assuring that the Student Technicians receive appropriate training in safe equipment operation. The FOUNDATION will assume all liability for Student Technicians, and hold harmless COLLEGE, and its employees and representatives, in any legal actions regarding Student Technicians while performing the scope of their duty as a Student Technician.
8. Supervising the Student Technicians in all daily tasks.
9. Maintaining Site records on all actions, and issuing all required reports.
10. Ensuring the cleanliness and maintenance of the Site, and of the machines used by the Referee Student Technician Training Program.
11. Interacting with the customers and displaying a high level of service.
12. Performing all testing procedures and engaging in required referee actions.
13. Performing other functions as required.

**ATTACHMENT III**

**Site Modifications**

COLLEGE and the FOUNDATION agree that the following modifications will be made to the Site by the FOUNDATION:

**None.**



## ATTACHMENT IV

### General Provisions

#### **A. Disputes**

In the event of a dispute between COLLEGE and/or DISTRICT and the FOUNDATION, each party agrees to file a "Notice of Dispute" with the other party within ten (10) business days of the discovery of the problem. Within ten (10) business days of filing the Notice, the parties will meet in a mutually agreeable manner for the purpose of resolving the dispute. If the dispute cannot be resolved to the satisfaction of both parties, then an impasse will be declared. Upon impasse, all agreements will be terminated, and the FOUNDATION will remove all of its property from COLLEGE within fourteen (14) calendar days of the declaration of impasse. All COLLEGE facilities and equipment will be left in fully operational condition, with full containers of calibration gases and "zero" air, and filters to continue operations. In the event of any default or breach by COLLEGE and/or DISTRICT, the FOUNDATION will pay COLLEGE and/or DISTRICT only the reasonable value of its services theretofore rendered satisfactorily, as may be agreed by the parties, or determined by a court of law.

#### **B. Indemnification**

The FOUNDATION will indemnify, defend and hold harmless DISTRICT, and its directors, officers, agents, employees and successors against any and all third party losses, liabilities, claims, actions, suits, proceedings, penalties, fines, costs or expenses, including but not limited to, reasonable attorneys' fees and costs, resulting from, arising out of, or connected with (a) any breach of this Site License by the FOUNDATION; or (b) any willful misconduct or negligence act or omission in the performance of responsibilities under this Site License by the FOUNDATION or its employees, subcontractors, or any person or entity for whom the FOUNDATION is responsible. Such defense and payment will be conditional upon DISTRICT notifying the FOUNDATION of any such claim in writing and tendering the defense thereof within a reasonable time. DISTRICT will reasonably cooperate in the defense and in any related settlement negotiations, and will have the right to approve or disapprove any settlement or compromise and such approval will not unreasonably be withheld or delayed.

DISTRICT will indemnify, defend and hold harmless the FOUNDATION, and its directors, officers, agents, employees and successors against any and all third party losses, liabilities, claims, actions, suits, proceedings, penalties, fines, costs or expenses, including but not limited to, reasonable attorneys' fees and costs, resulting from, arising out of, or connected with (a) any breach of this Site License by COLLEGE and/or DISTRICT; or (b) any willful misconduct or negligence act or omission in the performance of responsibilities under this Site License by COLLEGE and/or DISTRICT or its employees, subcontractors, or any person or entity for whom COLLEGE and/or DISTRICT is responsible. Such defense and payment will be conditional upon COLLEGE and/or DISTRICT notifying the FOUNDATION of any such claim in writing and tendering the defense thereof within a reasonable time. The FOUNDATION will reasonably cooperate in the defense and in any related settlement negotiations, and will have the right to approve or disapprove any settlement or compromise and such approval will not unreasonably be withheld or delayed.

#### **C. Prior and Supplemental Agreements**

This Site License supersedes and makes null and void any prior agreements between the parties that conflict with the terms of this Site License. To the extent that any documents conflict with the terms of this Site License, this Site License will control, unless otherwise agreed upon by both parties in writing.

#### **D. Changes to Terms**

Any changes or modifications to the terms of this Site License must be agreed upon by both parties in writing. No oral understanding or agreement will be incorporated herein or binding on either party to this Site License.

#### **E. Availability of Program Funds**

1. It is mutually understood and agreed between the parties that this Site License may have been written before the appropriation of federal, state, and/or local funds, for the mutual benefit of both parties in order to avoid Program delays which would occur if this Site License was executed after that determination was made.
2. It is mutually understood and agreed between the parties that this Site License is valid and enforceable only if sufficient funds are made available to the FOUNDATION by BAR for the applicable fiscal year for the purpose of the Program and is subject to any additional restrictions, limitations, or conditions enacted by BAR that may affect the provisions, terms or funding of this Site License in any manner.
3. The FOUNDATION reserves the right, at its own option and with written notice to DISTRICT, to immediately suspend operations and payment if: (1) the State of California, the Department of Consumer Affairs or any other state agency issues IOUs to the FOUNDATION or imposes any restrictions, limitations, or conditions on the Program or this Site License; or (2) the Governor of the State of California issues an Executive Order that affects the provisions, terms or funding of this Site License in any manner.

#### **F. Confidentiality**

Subject to applicable federal, state and local law, including but not limited to the Richard McKee Transparency Act of 2011, all parties to this Site License will maintain as confidential all information obtained as a result of participating in this Site License. No party will disclose such information to any other person or entity without prior written authorization by the appropriate representative of the other party.

#### **G. Assignment**

This Site License is not assignable by either DISTRICT or the FOUNDATION, either in part or in whole, without prior written consent of the other party to this Site License. Any assignment without prior written consent of the other party is void.

#### **H. Governing Law**

It is agreed that the law of the State of California will govern this Site License.

#### **I. Time Is of the Essence**

The timing for performance of tasks necessary for the operation of this Site License may be changed by written agreement, after consultation between the parties. The date of completion of this Site License, and any payment amounts specified herein, may only be altered by formal amendment of this Site License.

## **J. Ownership of Data**

Data and reports developed for and under this Site License will become the property of the FOUNDATION. Such data or reports will not be disclosed without prior written permission of the Program Director.

## **K. Termination**

This Site License may be terminated, without penalty, by either party upon providing written notice to the other party thirty (30) days before the termination date.

## **L. Notices**

1. Notice to the FOUNDATION may be given by certified mail, postage fully prepaid, to the following person and address:

**Foundation for California Community Colleges  
Director, Smog Check Referee Program Operations  
1102 Q Street, Suite 4800  
Sacramento, CA 95811**

2. Notice to COLLEGE may be given by certified mail, postage full prepaid, to the following person and address:

**Chabot-Las Positas Community College District  
Vice Chancellor, Business Services  
7600 Dublin Blvd, 3<sup>rd</sup> Floor  
Dublin, CA 94568**

3. Such notice will be effective when received, as indicated by post office records. If deemed undeliverable by the post office, such notice will be effective nevertheless fifteen (15) days after mailing.
4. Alternatively, notice may be given by personal delivery such as Federal Express, United Parcel Service, or other licensed courier services, to the addresses provided above. Such notice will be deemed effective when delivered unless a legal holiday commences during said twenty-four (24) hour period, in which case the effective time of the notice will be postponed twenty-four (24) hours for each intervening day

## **M. Non-Discrimination**

DISTRICT, COLLEGE, and the FOUNDATION agree that there will be no discrimination against, or segregation of, any person or group of persons on account of sex, sexual orientation, marital status, race, age, physical or mental disability, medical condition, denial of family care leave, color, religion, creed, or national origin or ancestry in the use or enjoyment of Site and Program, nor will DISTRICT, COLLEGE, or the FOUNDATION or any person claiming under or through them, establish or permit any such practice or practices of discrimination or segregation concerning the use or occupancy of Site by the FOUNDATION. The FOUNDATION will ensure that the evaluation and treatment of employees and applicants for employment is free of such discrimination.

#### **N. Americans with Disabilities Act**

DISTRICT and COLLEGE will comply with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability and ensures equal opportunity and access for persons with disabilities, as well as applicable regulations and guidelines issued pursuant to the ADA (42 U.S.C. 12101 et seq.) and any similar local, state or federal laws. DISTRICT and COLLEGE represents and warrant that the Site, the Site building, and surrounding grounds will be reasonably accessible to persons with disabilities.

**O. Counterparts.** This Agreement may be executed in any number of counterparts, each of which is enforceable against the parties actually executing such parts, and all of which together constitute one instrument.

**P. COVID-19.** DISTRICT and COLLEGE agree that DISTRICT, COLLEGE, and Site shall comply with all applicable federal, state, and local orders, advisories, and guidelines on COVID-19 related workplace restrictions and notification obligations, including, but not limited to those from the Center for Disease Control and Prevention (CDC), the California Department of Public Health (CDPH), California Division of Occupational Safety and Health of California (Cal/OSHA) and FOUNDATION's COVID-19 Prevention Plan. DISTRICT and COLLEGE understand that COVID-19 regulations and FOUNDATION's COVID-19 Prevention Plan may change from time to time.

## ATTACHMENT V

### Definitions

Smog Check Referee Program. The Smog Check Referee Program is administered by the State of California's Bureau of Automotive Repair and the Foundation for California Community Colleges. The program serves the people of California who need assistance with a smog check or a noise test for their vehicle.

Student Technician Program. One intention of the Program is to provide training to California students to obtain work-ready skills as Automotive Technicians. Consequently, the Foundation will ensure that Student Technicians obtain training and job experience as Automotive Technicians with the intent that the technicians can pursue any related employment in the public or private sector.

Business Days are defined as weekdays.

In a Basic Area motorists can take their cars to any facility offering a smog test. Testing is every other year at registration time or when a car changes ownership.

An Enhanced Area is considered by the Air Resources Board and U.S. Environmental Protection Agency to have the most serious air quality problems. Smog Checks are done every two years in these areas. Testing on a dynamometer will be mandatory in Enhanced Areas. Enhanced Areas are typically urbanized areas.

Change-of-Ownership Areas are the least populated counties. Smog checks are only required when a car changes owners.

A Referee is a Foundation employee at a College Site who is responsible for inspecting and testing vehicles, determining if vehicles should be granted a smog certificate or sent back to a Smog Check station for repairs, and supervising, training and mentoring Student Technicians. The Referee is responsible for providing information to motorists, Program technicians, the College Representative and others needing assistance. The types of vehicle problems the Referee will handle include those listed in Attachment II, "Referee Site Functions & Referee Duties."

In a Sound Test Program, the Referee tests the exhaust noise level of vehicles. A decimeter is used in compliance with BAR direction and SAE standards. Only motorists receiving a citation for violation of Vehicle Code § 27152 will be required to be tested.

A Student Technician assists the Referee, while being trained in the skills required of Student Technicians. The Referee will serve as mentor, trainer, and supervisor. All Student Technicians must be students in six units of classes per semester at a California community college.

The Call Center is located in Sacramento and serves the entire state. The primary purpose of the Call Center is to receive motorist calls and to schedule appointments at the Referee Sites. At the Call Center, motorists will be able to contact a technical director, who can handle disputes that could not be resolved at the Referee Site. An "800" number will be provided for motorists' convenience.