

JOINT-USE AGREEMENT  
FOR USE OF SHARED CONSTRUCTION TRADE FACILITIES

THIS JOINT-USE AGREEMENT FOR USE OF SHARED FACILITIES ("Agreement") is entered into this day of \_\_\_\_ 2008, by and between the Chabot-Los Positas Community College District, a California public community college district duly organized and validly existing under the Constitution and law of the State of California, and specifically Division 7 of Title 3 of the California Education Code ("Chabot-Las Positas"), and Tri-CED Community Recycling, a California not for profit corporation existing under the State of California ("Tri-CED") (collectively, Tri-CED and Chabot-Las Positas Community College District shall be referred to herein as the "Parties" and individually as a "Party")

RECITALS

- A. WHEREAS, Tri-CED Community Recycling and Chabot-Las Positas Community College District have determined that a demonstrated community need exists for an Educational Complex which provides training in environmental sciences and other academic fields.
- B. WHEREAS, Tri-CED Community Recycling is the owner in fee of that certain real property described in Exhibit "B" attached hereto located at 33377 Western Avenue, Union City, California ("the site")
- C. WHEREAS, Tri-CED Community Recycling has agreed to contribute use of the Site for the benefit of the Project.
- D. WHEREAS, Chabot College Foundation has agreed to be the joint-use partner and contribute matching funds of twenty-five (25) percent of the eligible cost of the Project in accordance with the Education Code.
- E. WHEREAS, the parties acknowledge and agree that this Agreement shall be contingent upon and effective only if third party funding is acquired to construct the Project;
- F. WHEREAS, the Parties desire to define, the method of sharing capital and operating costs, the relative responsibilities for the operation and staffing of the Educational Complex and the manner in which safety will be ensured with respect to the Project pursuant to the terms set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals the Parties hereto agree as follows:

- 1.0 METHOD OF SHARING CAPITAL AND OPERATING COSTS: The Parties will share capital and operating costs as follows:
  - 1.1 Capital Costs Chabot-Las Positas Community College District will

contribute matching funds constituting 58 percent of the eligible costs for the Project. Chabot-Las Positas' contribution is contingent upon Chabot-Las Positas securing third-party funding.

## 1.2 Operating Cost

1.2.1 Maintenance cleaning repair, maintenance and all other custodial services for the Educational Complex and its restrooms shall be performed by Tri-CED Community Recycling.

1.2.2 Utilities Tri-CED Community Recycling shall be responsible for the payment of all utilities associated with the Educational Complex.

1.2.3 Rent Chabot-Las Positas will not be charged rent, or any other use fee, for use of the Educational Complex during the term of this agreement.

2.0 PROJECT DESCRIPTION: The following is a description of the Project: The goal of the project is to reduce materials going into landfills by mounting a comprehensive educational effort that will result in behavior change to maximize waste reduction at many levels for the cities and communities of Southern Alameda County through the following objectives:

- 2.1 To design and operate the Center as an economically viable and sustainable Center.
- 2.2 To develop and operate the Center jointly between Chabot College and Tri-CED.
- 2.3 To develop a job-focused environmental technician program (i.e. Environmental Technician, Pollution Control Technician) that will have specific targeted employment outcomes.
- 2.4 To develop and provide experiential and “hands-on” programs, activities, events and field trips for K-12 school students in order to provide them with direct exposure to, an understanding of and an appreciation for recycling and environmentally related topics and issues.
- 2.5 To create and provide programs, events, activities and other appropriate opportunities for community organizations to access and become involved with the Center
- 2.6 To expand the reach of Chabot Colleges’ standard curriculum, as well as the job training program, to more individuals in the area by increasing the amount of available teaching space and educational resources in Southern Alameda County.

3.0 CONSTRUCTION OF FACILITIES: Tri-CED Community Recycling agrees to design and construct the Educational Complex in accordance with the Plans attached hereto as Exhibit "A". A copy of the Project's estimated construction cost is set forth in Exhibit "C" hereto. All construction services are to be performed by the properly licensed architect, engineer, contractor, or inspector (including construction management services which shall be provided by a licensed contractor, architect or engineer), and shall comply with all public works labor requirements, including the payment of prevailing wages as well as all state codes applicable to Community College Construction.

4.0 OPERATION, STAFFING, AND SAFETY OF THE EDUCATIONAL COMPLEX: The following describes the Parties relative responsibilities for the operation, staffing and safety of the Education Complex:

4.1 Operation Tri-CED Community Recycling and Chabot College will have sole responsibility for the operation and management of the Educational Complex.

4.2 Operation Chabot-Las Positas Community College District will operate and oversee the daily educational operation of the Center and will provide staff for conducting and administering the educational programs offered in the Education Complex.

5.0 USE OF EDUCATIONAL COMPLEX: Each party agrees to utilize the project facilities in conformance with Federal and State Law as well as administrative regulations and/or board policies.

6.0 PROJECT FUNDING: Chabot College Foundation share shall be contributed prior to the Notice of Completion for the Project. Chabot College Foundation's contribution is contingent upon securing third-party funding. Tri-CED Community Recycling shall contribute the use of the Site.

A copy of the Preliminary Plans in set forth in Exhibit "A" hereto

A copy of the Legal Description of the Project area is set forth in Exhibit "B" hereto

A copy of the Estimated Construction Costs for the project is set forth in Exhibit "C" hereto

A copy of the Joint-Use Grant application for the project is set forth in Exhibit "D" hereto

7.0 OWNERSHIP OF THE SITE, FACILITY, FURNISHINGS, AND EQUIPMENT: The underlying fee title to the land, building and improvements shall be owned by Tri-CED Community Recycling. Personal Property, trade fixtures, furnishings or equipment provided or paid for by Chabot-Las Positas or Tri-CED Community Recycling shall remain the property of Chabot-Las Positas or Tri-CED Community Recycling respectively.

8.0 TERM OF THE AGREEMENT: This Agreement shall commence upon the execution by the Parties, and remain in effect until that date which is twenty-five (25) years from the date of completion of this project. This Agreement shall be renewable for terms up to five (5) years per term.

## 9.0 INDEMNIFICATION

9.1 No party nor any of its officers, agents, volunteers, contractors, or employees shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of another Party under or in connection with any obligation delegated to the parties under this agreement. Each Party shall indemnify, defend and hold harmless the other parties, their officers, agents, volunteers, contractors, and employees from any and all liability, loss, expense (including reasonable attorney fees and other defense costs), or claims imposed for damages of any nature whatsoever, including but not limited to, bodily injury, death, personal injury, or property damage occurring by reason of any acts or omissions on the part of the Party's own officers, agents, contractors, or employees under or in connection with any obligation delegated to such Party under this Agreement. This indemnity shall survive termination of this Agreement.

9.2 Each Party agrees to require all third party organizations which each Party authorizes to use the project facilities or enter the site execute a document stating the following:

[Name of organization] agree to hold harmless, defend, and indemnify the parties, their respective Board Members, agents, officers, employees and representatives against all actions, claims, or demands for injury, death, loss, or damage, was solely due to the willful acts or omissions of the parties and/or their respective Board Members, agents, officers, employees and representatives, whenever such injury, death, loss, damage or claim is a consequence of, its agents, officers, employees and representatives, whenever such an injury, death, loss, damage or claim is a consequence of, or arise out of the use of or access to – facilities, by [name of organization] or its agents, officers, employees and representatives. The [Name of organization] shall maintain coverage throughout the entire term of this Agreement commercial general liability insurance or a program of self-insurance coverage in the amount of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) aggregate, including contractual liability insurance covering assumption of liability under this Agreement at a limit of not less than One Million Dollars (\$1,000,000) each occurrence (combined single limit). In addition, the [Name of organization] shall provide an additional insurance endorsement page that names the parties respective Board Members, agents, officers, employees and representatives as additional insured.

9.3 Tort Liability Governmental Code Section 895.2 imposes certain tort liability jointly upon public agencies solely by reason of such public agencies being parties to an agreement as defined in Government Code Section 895. Therefore, the Parties hereto, as between themselves, pursuant to the authorization contained in Government Code Sections 895.4 and 895.6, each assumes the full liability imposed upon it or any of its officers, agents, representatives or employees by law for injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement, to the same extent that such liability would be imposed in the absence of Government Code Section 895.2 to achieve this purpose, each Party indemnifies and hold harmless the other Party for any loss, cost, or expense, including reasonable attorneys' fees, that may be imposed upon or incurred by such other Party solely by virtue of Governmental Code Section 895.21.

## 10.0 INSURANCE

10.1 General Insurance Requirements without limiting the indemnification provision and during the term of this Agreement, the Parties shall provide and maintain, and shall require their subcontractors to maintain, the insurance programs set forth in this Section 9.0. Each Party's insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by the other Parties, and shall be provided and maintained at the Party's own expense.

10.1.1 Evidence of Insurance each Party shall provide a letter or certification of insurance, or self-insurance, satisfactory to the other Parties prior to commencing services under this Agreement. Such evidence shall identify this Agreement and the required overages, and provide that the other Parties receive written notice by mail at least thirty (30) days in advance of cancellation for all required coverages.

10.2 Notification of Incidents, Claims or Suits the Parties mutually agree to notify one another of any accident or incident relating to services performed under this Agreement which involves injury or property damage which may result in the filing of a claim or lawsuit against any of the Parties, and, of any actual third party claim or lawsuit arising from or related to services under this Agreement.

10.3 Insurance Coverage Requirements each Party shall maintain the following programs of insurance coverage:

10.3.1 General Liability insurance limits of not less than the following, and naming the other Parties as an additional insured:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate	\$1 million
Personal and Advertising Injury	\$1 million
Each Occurrence	\$1 million

- 11.0 NON-DISCRIMINATION: The Parties agree that in providing the Educational Complex services, the hiring of staff, and the selection and use of volunteers, all persons will be treated equally and without regard to or because of race, color religion, ancestry, national origin, sex, age, sexual orientation, martial status or disability, and in compliance with all anti-discrimination laws of the United States of America and the State of California.
- 12.0 REVIEW AND MODIFICATION PROCESS: The terms and conditions of this Agreement shall be reviewed jointly by the Parties annually during the term to determine that the services of the Educational Complex continue to meet the needs of the public and students. Each Party shall designate a representative as the contact liaison in connection with any and all issues pertaining to this Agreement. Tri-CED Community Recycling and Chabot-Las Positas Community College District shall each designate in writing to the other Party the identity of each liaison within ten (10) business days of the award of the Grant. The terms and conditions of the Agreement may be revised or amended in writing as may be necessary from time to time as mutually agreed by the Parties provided that any such amendment is consistent with the original intent of the Agreement and the requirements of the Grant.
- 13.0 EFFECTIVNESS OF AGREEMENT: The Parties agree that this Agreement shall be operative only if the applications for the Grant funding and contingent third-party funding is approved and the funding received.
- 14.0 NOTICES
- 14.1 Mailed Notice any notice required or desired to be served by any Party shall be personally delivered by United States Mail, postage-prepaid, certified, return receipt requested, or by reputable document delivery services that provided a receipt showing the date and time of delivery. Notices delivered by mail shall be effective at 5:00 p.m. on the second calendar day following dispatch. Notices personally delivered or delivered by document delivery service shall be effective upon receipt. Notices shall be delivered to the Parties at the following addresses:
- To: Tri-CED Community Recycling  
33377 Western Avenue  
Union City, CA 94587  
Attn: Richard Valle, President/CEO  
Telephone: (510) 471-3850  
Facsimile: (510) 429-8031
- To: Chabot-Las Positas Community College District  
5020 Franklin Drive  
Pleasanton, CA 94588  
Attn: Dr. Joel Kinnamon  
Telephone: (925) 485-5207

With a copy to: Chabot College  
25555 Hesperian Boulevard  
Hayward, CA 94545  
Attn: President Celia Barberena  
Telephone: (510) 723-6640  
Facsimile: (510) 723-7126

14.2 Emergency Contact Numbers the Parties will provide each other after-hours emergency contact phone numbers of appropriate supervisory staff which shall be periodically updates. Such list will also include emergency contact numbers for other facilities which may be utilized in the event of community emergency.

#### 15.0 INDEPENDENT CONTRACTOR

15.1 The parties hereby acknowledge that they are independent contractors. Neither Chabot-Las Positas nor any of its agents, representatives, students or employees shall be considered agents, representatives, students or employees to be considered agents, representatives, or employees of District. Furthermore, in no event shall this Agreement be construed as establishing the relationship of agent, servant, employee, partnership, joint venture, association or any similar relationship between the parties hereto. As independent contractors, each party will be solely responsible for determining the means and methods for performing the services described herein. Each party understands and agrees that other party is engaged in an independent business and the party shall have no right to direct or control in any way or to any degree the manner of other party's performance hereunder. Each party further understand that it is not authorized and shall not make any agreement, contract or representation on behalf of the other party or create any obligation, express or implied, on the part of the other party.

15.2 Chabot-Las Positas shall be liable for any debts, obligations, acts and omissions relating to its own agents, representatives, students or employees, including the deduction of all federal, state and local income taxes, social security, FICA and other charges, if any, to be deducted from the compensation of Chabot-Las Positas' employees. Nothing in this Agreement shall be interpreted as creating or establishing a relationship of employer and employee between the Chabot-Las Positas and Tri-CED Community Recycling or any employee or agent of Tri-CED Community Recycling. Each and every person employed by Tri-CED Community Recycling who is providing services to Chabot-Las Positas under this Agreement shall, at all times, remain an employee of Tri-CED Community

Recycling. Tri-CED Community Recycling employees shall not, at any time, or in any way, be entitled to sick leave, vacations, retirement, or other fringe benefits from the Chabot-Las Positas, nor shall they be entitled to overtime pay from the Chabot-Las Positas. Tri-CED Community Recycling is solely responsible for paying all necessary State or Federal tax for itself and its employees. Chabot-Las Positas will make no State or Federal unemployment insurance or disability insurance contributions on behalf of Tri-CED Community Recycling and/or its agents or Chabot-Las Positas is solely responsible for paying all necessary State employees. Neither Tri-CED Community Recycling nor its employees shall be included in the classified or faculty service, have any property rights to any position, or have any of the rights that any employee of the Chabot-Las Positas may otherwise have in the event of termination of this Agreement.

In the same respect, Tri-CED Community Recycling shall be liable for any debts, obligations, acts or omissions relating to its own agents, representatives, students, or employees, including deduction of all federal, state and local income taxes, social security, FICA and other charges, if any, to be deducted from the compensation of Tri-CED Community Recycling employees. Nothing in this Agreement shall be interpreted as creating or establishing a relationship of employer and employee between the Tri- CED Community Recycling and Chabot-Las Positas or any employee or agent of Chabot-Las Positas. Each and every person employed by Chabot-Las Positas who is providing services to Tri-CED Community Recycling under this Agreement shall, at all times, remain an employee of Chabot-Las Positas. Chabot-Las Positas' employees shall not, at any time, or in any way, be entitled to sick leave, vacations, retirement, or other fringe benefits from Tri-CED Community Recycling, nor shall they be entitled to overtime pay from Tri-CED Community Recycling. Chabot-Las-Positas is solely responsible for paying all necessary State or Federal tax for itself and its employees. Tri-CED Community Recycling will make no State or Federal unemployment insurance or disability insurance contributions on behalf of Chabot-Las Positas and/or its agents or employees. Neither Chabot-Las Positas nor its employees shall be included in the classified or faculty service, have any property rights to any position, or have any of the rights that any employee of Tri-CED Community Recycling may otherwise have in the event of termination of this Agreement.

- 15.3 The provisions set forth herein shall survive expiration or other termination of this Agreement regardless of the cause of such termination.



## 16.0 MISCELLANEOUS

- 16.1 Attorneys' Fees: Litigation in the Event of a dispute under this Agreement, each Party shall bear its own attorneys' fees and costs.
- 16.2 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.
- 16.3 Exhibits all exhibits and attachments to which reference is made are deemed incorporated in this Agreement, whether or not actually attached.
- 16.4 Non-Liability of Officials no officer, member, employee, agent, or representative of the Parties shall be personally liable 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.
- 16.5 Third Party Beneficiaries nothing in this Agreement shall be construed to confer any rights upon any party not signatory to this Agreement.
- 16.6 Captions the captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.
- 16.7 No Waiver any failure of a party 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.
- 16.8 Counterparts this Agreement may be executed in any number of counterparty copies, all which shall constitute one and the same Agreement and each of which shall constitute an original.

IN WITNESS WHEREOF, Tri-CED Community Recycling and Chabot-Las Positas Community College District have entered into this Agreement as of the Effective Date.

Tri-CED Community Recycling  
A Not for Profit Corporation

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

Its: \_\_\_\_\_

Chabot-Las Positas Community College District  
A California institute of higher education

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

Its: \_\_\_\_\_

Agreement is subject to review and final approval by the Chabot-Las Positas Community College District Board of Trustees.

