

FACILITIES MANAGEMENT MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made and entered into this 19th day of November in the year 2012, by and between the COMPTON COMMUNITY COLLEGE DISTRICT (hereinafter referred to as "Compton") and the "EL CAMINO COMMUNITY COLLEGE DISTRICT" (hereinafter referred to as "El Camino" and collectively, as the "Parties").

WHEREAS, the State of California has approved a Capital Outlay Project to the El Camino Community College District, El Camino College Compton Center for "Infrastructure Replacement Phase 1" in the total amount of approximately \$37,714,000. Approximately \$31,180,000 will be from the State of California and approximately \$6,534,000 from Compton Local Bond Funds (Measure CC);

WHEREAS, the State of California has approved a Capital Outlay Project to the El Camino Community College District, El Camino College Compton Center for "Infrastructure Replacement Phase 2" in the total amount of approximately \$19,498,000. Approximately \$17,248,000 will be from the State of California and approximately \$2,250,000 from Compton Local Bond Funds (Measure CC);

WHEREAS, the State of California has approved a Capital Outlay Project to the El Camino Community College District, El Camino College Compton Center for "Allied Health Renovation" in the total amount of approximately \$13,270,000. Approximately \$8,946,000 will be from State of California and approximately \$4,324,000 from Compton Local Bond Funds (Measure CC). Note: all approved Capital Outlay Plan projects cited in the above Recitals shall be individually referred to as "Project" and collectively referred to as "Projects";

WHEREAS, since the State of California Department of Finance requires the Capital Outlay Projects approved for Compton to be in the name of El Camino for the Projects to be constructed on Compton's property, the Parties would like to set forth each Party's rights and responsibilities for the Projects in this MOU; Capital Outlay Project bid awards require approval by Compton, El Camino, Chancellor's Office and Department of Finance. The State of California will adjust these numbers at various stages of the project.

WHEREAS, the Parties agree to commit to a collaborative process where each Party will provide input and recommendations to be considered in earnest by the other Party, with the Parties working together to make collaborative decisions for the benefit of the Projects;

WHEREAS, the Parties agree that El Camino will take primary responsibility to manage the design, construction, State of California funding issues, and related activities necessary to complete the Projects, and Compton will take primary responsibility for local financing (Measure CC), and provide oversight and approvals as necessary;

WHEREAS, when El Camino and Compton are required to review or approve any items necessary to complete the Projects, each shall do so in a timely manner as to not delay progress or completion of the Projects, and any approvals shall not be unreasonably withheld, and,

WHEREAS, the parties wish to use the provisions of this MOU as a model for future projects of a similar nature.

NOW, THEREFORE, the Parties hereto agree as follows:

1. No Transfer or Waiver of Rights. Nothing in this Agreement shall be construed as Compton transferring or waiving to El Camino or any other party, any rights whatsoever to any property, fixtures, equipment, facilities etc. related to the Projects. All rights or title to any property (real, personal or others) shall be retained by Compton unless otherwise expressly agreed to in writing by Compton.
2. Term. The term of this MOU shall be from approval of this MOU by ECCCD Governing Board of Trustees and CCCD's Special Trustee until final completion of all Projects, or as modified in writing and signed by both Parties.
3. Funding/ Financial Responsibilities.
 - A. El Camino and its consultants shall maintain books and records of revenue received and expenses incurred to complete planning, design, bidding and construction of the Projects. Personnel or its consultants utilized by El Camino to perform accounting and related functions under this Agreement shall be skilled, trained and experienced in maintaining accounting books and records relating to design, bidding and construction of public works projects. Accounting books and records developed and maintained by El Camino hereunder shall be: (i) consistent with generally accepted accounting principles applied in a consistent manner; (ii) El Camino policies; and (iii) available at all times to the District for inspection, review or reproduction. Accounting books and records maintained by El Camino College shall be in accordance with District policies and requirements. Additionally, the Program Manager shall assist with audit preparation.
 1. El Camino and its consultants shall maintain records of expenditures incurred to complete planning, design, bidding and construction of the Projects. Records of expenditures must incorporate functions required by the El Camino including without limitation, sorting expenditures by the following: (i) per Project; (ii) per Project year- to- date; (iii) cumulative per Project; (iv) Projects year-to-date; and (v) by categories of expenditures.

2. El Camino shall have the authority to take such action as is reasonably necessary to insure that State funds are legally and properly expended.
 - B. Compton shall have responsibility for all local (including Measure CC) financial commitments related to the Projects, including the payment of appropriate professional consultants or other third parties necessary to plan, design, construct and complete the Projects including, but not limited to, architects, engineers, contractors, etc. (collectively, "Consultants" and/or "Vendors"). Compton shall be responsible to maintain proper cash flow for projects. Compton shall provide timely payments to all consultants' and/or vendors associated with these projects. Compton shall have the authority to take such action as is reasonably necessary to insure that its local bond funds are legally and properly expended.
 - C. The Parties shall cooperate and provide each other all necessary information and documents to properly and timely submit Capital Outlay Reimbursement Claims to the State of California related to the Projects. El Camino shall review, approve and submit any such Claims prior to submittal to the State of California for reimbursement.
 - D. El Camino shall ensure timely disbursement of all received funds from the State of California related to the Projects less the amounts received for payments related to 3 A. a. The Parties agree to provide each other a detailed accounting of all State of California Funds associated with the Projects and such accounting records shall be presented to the other Party on a monthly basis or other regular basis reasonably requested by the other Party.
4. Budgets. El Camino shall develop budgets for the Projects based on the amounts approved by the State of California in the Capital Outlay Plans. This information shall be made available to Compton for review and approval. El Camino shall update all budgets for the Projects on a regular basis, or as necessary, which shall contain, to the extent possible, real-time information including the following:
 - A. Original/ approved budget vs. current budget
 - B. Original/ approved budget vs. amounts spent/ committed/ projected
 - C. List of all funding sources and amounts
 - D. Budget and contract growth analysis
 - E. Contract schedule growth analysis
 - F. Contract percentage spent analysis
5. Project Costs and Tracking. El Camino shall monitor and track all costs to ensure such costs are within the approved budgets for the Projects. This information shall be made available to Compton for review and approval. El Camino shall update all costs related to the Projects on at least a monthly basis, or as necessary, which shall contain, to the extent possible, real-time information including:

- A. Cost status by budget category: budgets, contracts, proposed changes, change orders, amounts paid to date, projected costs to complete vs. budget variances and requests for information ("RFI's").
- B. Contracts: original contract amounts, change orders, current contract amounts, proposed changes and approved payments. Any changes to contracts prepared by El Camino shall be made available to Compton for review and approval.
- C. Payment requests/invoices: amounts requested, approved, retention, amounts paid and dates paid, amounts received and dates received.
- D. Compton agrees that the State of California funding for management of the projects shall be retained by El Camino for payment to a construction management firm for its actions undertaken in this MOU.
- E. Compton shall provide, at no cost to El Camino, sufficient space, supplies, and equipment to enable El Camino to manage the El Camino projects constructed on the Compton property, including sufficient onsite trailer space and communication hookups such as telephone, computer, and the like.
- F. Compton shall be responsible for any and all attorney's fees pertaining to the capital outlay projects under this MOU. Compton shall not unreasonably withhold such approval, and shall act in the best interest of the parties and the project.

Compton shall have the authority to review all monthly payment applications related to the Projects.

- 6. Project Accounting. The Parties agree to cooperate and coordinate accounting formats and procedures for the Projects that are compatible and consistent with each Party's existing accounting requirements, as well as those of the Los Angeles County Office of Education.
- 7. Schedules. El Camino shall prepare a master schedule for all Projects, as well as individual schedules for each Project, for review and approval by Compton. El Camino shall update the master and Project schedules on a regular basis, or as necessary, which shall contain, to the extent possible, real-time information including: major Project milestones, schedule for design, construction and close-out of Projects. El Camino shall provide all scheduling updates to Compton in a timely manner.
- 8. Monthly Reports. El Camino shall prepare monthly status reports including updates and information as required in this MOU related to the budgets, costs, schedules and safety issues for the Projects. These reports shall be provided to Compton for review in a timely manner.
- 9. Consultants and Contracts. Except for program managers, construction managers or project managers which shall be the sole responsibility of El Camino, Compton shall

contract with appropriate professional Consultants necessary to plan, design, construct and complete the Projects. Both Compton and El Camino shall have joint authority to approve all Consultants under contract with El Camino or Compton related to the Projects. If the Parties cannot agree on the selection of a particular Consultant, the Chancellor of the California Community Colleges decision will govern.

10. Bidding and Construction. El Camino shall prepare bid documents for construction of the Projects. If Compton elects to prequalify any Consultants related to the Projects, El Camino shall approve such process for prequalification.
11. Documents. Compton shall be provided clearance and access to review all relevant Project documents, except to the extent any such information or documents are protected by any applicable privileges or not subject to disclosure under applicable laws. If there are any documents that are only available as a hard copy or not available in an electronic format, El Camino will provide hard copies of such documents to Compton and Compton will provide hard copies of such documents to El Camino.
12. Insurance. Until completion of all Projects, El Camino and Compton shall either be self-insured or maintain workers' compensation and comprehensive liability insurance providing coverage for public liability, automobile liability, bodily injury and property damage. El Camino shall require all Consultants performing work or providing services for the Projects to be properly insured and obtain the required bonds. All Consultant contracts entered into by El Camino for the Projects shall include a requirement that Compton be named as an additional insured on all policies and that any indemnity/hold harmless provisions include El Camino as an express named indemnitee.
13. Indemnity.
 - A. El Camino shall, to the extent permitted by law, indemnify, defend, and hold harmless Compton, its officers, agents and employees, from all actions, claims or liabilities for any injury, death, damage, or loss to person or property, that arise in any manner from the acts or omissions of El Camino, its officers, agents and employees in the performance of this MOU, including, but not limited to, all actions, claims or liabilities arising or connected in any way with El Camino's actions taken pursuant to this MOU.
 - B. Compton shall, to the extent permitted by law, indemnify, defend, and hold harmless El Camino, its officers, agents and employees, from all actions, claims or liabilities for any injury, death, damage, or loss to person or property, that arise in any manner from the acts or omissions of Compton, its officers, agents and employees in the performance of this MOU, including, but not limited to, all actions, claims or liabilities arising or connected in any way with Compton's actions taken pursuant to this MOU.

C. The provisions of indemnity set forth in this Section shall not be construed to obligate a party to pay any liability including, but not limited to, punitive damages, which by law would be contrary to public policy or otherwise unlawful.

14. Collaborative Process. The Parties will endeavor to make decisions related to the Projects in a collaborative manner after considering each Party's input and recommendations. If there are any differing opinions or conflicts between the Parties related to how the Projects should be completed, a meeting with the Compton Chief Executive Officer or his/her designee and the El Camino Vice President of Administrative Services or his/her designee shall be held. The parties shall establish a joint facilities management team, co-chaired by the El Camino Vice President of Administrative Services and the Compton Chief Executive Officer or his/her designee. The team shall meet on a regular basis, generally monthly. If the Parties cannot agree, the Chancellor of the California Community Colleges decision will govern.
15. Entire Agreement. This MOU contains the entire agreement between the Parties with respect to the matters covered hereby, and supersedes all prior agreements, written or oral, between the Parties. No other agreement, or promise made by any Party not contained herein shall be binding or valid. This MOU shall be construed as one document and all of the agreements herein are in exchange for and in consideration of the commitments of each and all of the Parties herein as set out above. This MOU may be amended only by a writing signed by the Parties.
16. Enforceability. Should any provision of this MOU be declared or determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, or provisions shall not be affected thereby and said illegal, unenforceable, or invalid part, term, or provision shall be deemed not to be part of this MOU. This MOU shall be construed, determined and enforced in accordance with the laws of the State of California of California with venue in Los Angeles County, California.
17. Construction. The Parties agree that each Party has been represented by counsel; that counsel for each Party has reviewed this MOU; and that any rules of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in any interpretation of this MOU or any amendments or exhibits thereto.
18. Attorneys' Fees. In the event of a dispute under this MOU, each Party shall bear its own attorneys' fees and costs.
19. Assignment. No Party shall assign this MOU or any right or privilege any Party might have under this MOU without the prior mutual written consent of all Parties hereto.
20. Effect of Recitals. The Recitals herein are deemed true and correct, are hereby incorporated into this MOU as though fully set forth herein, and the Parties acknowledge and agree that they are each bound by the same.

21. Conflicts of Interest. No director, officer, official, representative, agent, or employee of any Party shall have any financial interest, direct or indirect, in this MOU.

22. Cooperation. The Parties acknowledge that it may be necessary to execute documents other than those specifically referred to herein in order to complete the objectives and requirements that are set out in this MOU. The Parties hereby agree to cooperate with each other by executing such other documents or taking such other actions as may be reasonably necessary to complete the objectives and requirements set forth herein in accordance with the intent of the Parties as evidenced in this MOU.

23. Third Party Beneficiaries. Nothing in this MOU shall be construed to confer any rights upon any party not signatory to this MOU.

24. Counterparts. This MOU may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

The Parties, through their authorized representatives, have executed this MOU as of the day and year first written above.

Compton Community College District:

~~El Camino Community College District~~

Tom Henry
Tom Henry Special Trustee

Tom M. Fallo
Thomas M. Fallo Superintendent/President

12-11-12
Date

1/2/13
Date

I have reviewed this Memorandum of Understanding and concur with its terms. I also confirm that the Special Trustee has the power to sign it and, acting in accordance with the authority I have granted him under the law, to bind Compton Community College District to the terms set forth in the agreement.

Dr. D. H. Harris
Chancellor, California Community Colleges

1/23/13
Date