

May 13, 2009

MEMORANDUM

TO: Members of the Governing Board
Southwestern Community College District

APPROVED BY: ^{RKC} Raj K. Chopra, Ph.D.
Superintendent/President

SUBMITTED BY: Mark Meadows, Ph.D. ^{MEM}
Vice President for Academic Affairs

INITIATED BY: Silvia Cornejo-Darcy ^{SC}
Acting Dean, Higher Education Center at Otay Mesa and
San Ysidro

SUBJECT: Amend Memorandum of Understanding with Xe
Services, LLC

RECOMMENDATION

Approve the amended Memorandum of Understanding (MOU), No. M4039.09, with Xe Services, LLC (formerly Blackwater Lodge and Training Center, Inc.), for the period of January 31, 2009 through December 31, 2013, inclusive, at no cost to the District.

OVERVIEW

Per the direction of the Governing Board, MOU No. M4039.09 has been amended with the following stipulations:

1. Amend termination clause to provide a four month written notice of termination by either party.
2. Amend the confidentially clause to limit its application solely to proprietary information relating to Xe Services, LLC's business activities such as methods, processes, clients, etc.
3. Eliminate binding arbitration clause.
4. Make California law the applicable law.
5. Eliminate the clause that gives Xe Services, LLC the contractual right to use SWC facilities.
6. Eliminate clause for reimbursement for Xe Services, LLC.

During the renegotiation process, Xe Services, LLC agreed to the District's recommended revisions. The contract has been reviewed by the District's legal counsel, Miller Brown & Dannis.

The MOU supports the use of the Xe Services, LLC facilities, U.S. Training Center Southwest, Inc., located at 7685 Siempre Viva Road, San Diego, CA 92154, for the purpose of firearms training as part of the requirements for the Southwestern College Police Academy Program.

FISCAL IMPACT/ACCOUNT

No cost to the District.

SCD/mb

MEMORANDUM OF UNDERSTANDING

between

Xe Services, LLC

and

SOUTHWESTERN COMMUNITY COLLEGE DISTRICT

This Memorandum of Understanding ("MOU" or "Agreement") is hereby entered into by and between Xe Services, LLC, hereinafter referred to as the "Agency" or "Xe," and Southwestern Community College District, hereinafter referred to as "District".

A. PURPOSE

The purpose of this MOU is to set forth the terms and conditions for the use by the District of the U.S. Training Center Southwest, Inc., located at 7685 Siempre Viva Road, San Diego CA 92154, (hereinafter referred to as the "Facility"), for the purpose of firearms training as part of the requirements for the District's Police Academy Program ("Police Academy") at no cost to the District.

B. STATEMENT OF MUTUAL BENEFIT AND INTERESTS

Xe Services, LLC and the District desire to cooperate to the maximum extent possible to achieve objectives of common interest and concern. Xe participates in outreach efforts for educational purposes with local higher education institutions that provide training in law enforcement; and the District wishes to provide law enforcement training to students leading to employment with law enforcement agencies through its Police Academy program located at its Otay Mesa campus.

C. NEEDS OF SOUTHWESTERN COLLEGE POLICE ACADEMY

As part of the training requirements of the Peace Officers Standards and Training (POST) (a required component of the Academy Program), students are required to complete 72 hours of Firearms/Chemical Agents training. The close proximity of the Facility in the community of Otay Mesa makes it an ideal location for the firearm training of the Police Academy's recruits.

The Southwestern College Police Academy shall be provided use of the Facility on Saturdays commencing Saturday, January 31, 2009 from 1300 hours to 1700 hours. The firearms sessions are held in four hour increments. Southwestern Police Academy runs two academy classes per year; therefore, the use of the Facility will be needed year round to accommodate the needs of both academic sessions. Class schedules will be provided to Agency personnel at the start of each academic session.

For purposes of this MOU, the term "Facility" will include use of the following:

1. Indoor Firing Range
2. Secured Firearm Storage Room
3. Classrooms
4. Firearms cleaning equipment area and equipment
5. Indoor mat area
6. Parking lot located in front of facility
7. Indoor Range Standing Targets (Academy will purchase paper silhouettes)
8. Indoor Range Props used for cover position for shooting
9. Use of tables and chairs for breaks when recruits are not shooting
10. Firearms armory to store forty five - 9mm Glock Pistols and 6 Shotguns. Serial numbers will be provided for all weapons, as well as the storage of ammunition

D. RESPONSIBILITIES AND PRIVILEGES OF THE DISTRICT

1. The DISTRICT assumes full responsibility for offering an educational program eligible for accreditation by the Peace Officers Standards and Training (POST).
2. The DISTRICT will provide the same quality of education in the Police Academy program as it does in all other curriculum offerings at the DISTRICT.
3. The word "faculty" as used herein means the DISTRICT faculty engaged in teaching in the DISTRICT Police Academy Program. The words "student" or "students" as used herein mean students of the DISTRICT who are enrolled in the DISTRICT Police Academy program.
4. The DISTRICT will provide the necessary qualified faculty to plan and coordinate the training experience for Police Academy students. Said faculty will assume responsibility for monitoring Police Academy students while using the Facility.
5. The DISTRICT will require that all faculty and students during use of the Facility follow all District Policies and Agency policies to maintain a safe learning environment.
6. The DISTRICT shall ensure all District faculty receive a briefing by Agency on Agency rules and regulations regarding usage of the facility and the presence of faculty and students and other District personnel on Agency property. Agency shall make a qualified representative available to the District for purposes of this briefing at least once at the start of each academic session. The parties jointly shall determine the briefing schedule.
7. The DISTRICT shall not use the Facility for any purpose in violation of any law, municipal ordinance, or regulation, nor shall the DISTRICT perform any acts or carry on any practices which may injure the Facility or any improvements located now or hereafter on the facility or be a nuisance, disturbance or menace to Agency or any other users of the Facility.

E. LIABILITY STATUS OF AGENCIES

1. The DISTRICT shall maintain at its own cost during the term of this Agreement with the following minimum insurance coverage:

Comprehensive General Liability Insurance covering the insured against claims of bodily injury, personal injury and property damage arising out of District's operations	\$1,000,000
Workers Compensation	Statutory
Employers Liability	\$1,000,000

The District shall provide Agency with certificates naming Agency as an additional insured on all of the policies (except Workers Compensation) prior to commencing operations at the Facility. The certificates shall provide at least thirty days' notice in the event of cancellation.

2. DISTRICT shall indemnify, defend and hold harmless Agency, its affiliates, subsidiaries, parent, officers, agents, and employees against any and all liability arising from any intentional or negligent act or omission of DISTRICT's students or faculty during the use of the Facility. Agency shall indemnify, defend and hold harmless DISTRICT, its governing board, agents, representatives, officers, consultants, employees, trustees, and volunteers from and against any and all liability arising from any intentional or negligent act or omission of Agency, its officers, agents or employees.

F. THE FOLLOWING IS MUTUALLY AGREED AND UNDERSTOOD BY BOTH PARTIES

1. FREEDOM OF INFORMATION ACT (FOIA). This MOU and any information furnished to or by the Agency or to or by the District under this MOU may be subject to the Freedom of Information Act (5 U.S.C. 552) and the California Public Records Act (Gov. Code, § 6250 et seq.).
2. ENTIRE AGREEMENT. This Memorandum of Understanding constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all other prior agreements, arrangements, understandings, statements, negotiations, correspondence, or communications, express or implied, and no oral statement or prior written statement not contained herein shall have any force and effect.
3. MODIFICATION. Modifications within the scope of the Agreement shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes being performed.
4. COMMENCEMENT/EXPIRATION DATE. The Agreement is effective as of January 31, 2009 and is effective through December 31, 2013, unless terminated sooner pursuant to section F5 of this MOU.
5. TERMINATION. Either party may terminate the Agreement in whole, or in part, by providing at least 4 months written notice to the non-terminating party; provided,

however, that if Xe is the terminating party, then such notice must be provided at least 4 months before the end of the then-current academic session in order to minimize disruption to the instructional program. If Xe's notice is not timely given, then such termination shall be effective as of the end of the next succeeding academic session.

6. ARBITRATION. This Memorandum of Understanding shall be governed by and construed in accordance with the laws of the State of California. Each Party hereby agrees that any dispute regarding interpretation or enforcement of any of the Parties' rights or obligations under this Agreement may be resolved by non-binding arbitration according to the rules of the American Arbitration Association. All costs and expenses shall be allocated among the Parties.
7. MEDIA. The District agrees that only District students, faculty and administration will be permitted to enter the Facility during periods of District use. No media or other persons or organizations under the District's control will be permitted to enter the Facility during periods of District use without written consent by the Agency. The District understands that there is training and other business proprietary information at the Facility and that no video footage or photographs showing Agency personnel will be permitted to be taken by District students or faculty, and unless otherwise required by law, District shall not publish or disclose proprietary information about the Facility or Agency personnel without the express written consent of Agency.
8. PRINCIPAL CONTACT. The principal contacts for this Agreement are:

Xe Services, LLC

Southwestern Community College
District

Brian Bonfiglio, Vice President
7685 Siempre Viva Road,
San Diego, CA 92154
Phone: 619-671-9910
FAX: 619-671-7081
E-Mail: brianbon@ustraining.com

Mark Meadows, Ph.D., Vice President
900 Otay Lakes Road
Chula Vista, CA 91910
Phone: 619-216-6754
FAX: 619-482-6337
E-Mail: mmeadows@swccd.edu

9. NON-FUND OBLIGATING DOCUMENT. This Agreement is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures including those for government procurement and printing. Such endeavors will be outlined in separate

agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Any contract or agreement for training or other services must fully comply with all applicable requirements for contracts involving public funds.

THE PARTIES HERETO have executed this MOU:

Raj K. Chopra, Ph.D., Superintendent/President
Southwestern Community College District
900 Otay Lakes Road
Chula Vista, California, United States of America

Date

Andrew Howell, Secretary
Xe Services, LLC

Date

Approved As To Form:
Office of the Senior Director of
Business Operations & Facilities
Planning *Revision to MOU*
Date: *# M4039.09 5/1/09*