

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CLAREMONT CLUB & SPA, A FAIRMONT HOTEL**

AND

EAST BAY INNOVATIONS

AND

The BEKELEY ADULT SCHOOL (BAS) / BERKELEY UNIFIED SCHOOL DISTRICT (BUSD)

(Project SEARCH)

The Memorandum of Administrative Understanding (“MOU”) is entered into by and between the Claremont Club & Spa, a Fairmont Hotel (Claremont), and East Bay Innovations (EBI), and the Berkeley Adult School (BAS) / Unified School District (BUSD). (BUSD and EBI may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS:

Whereas, Claremont Club & Spa, a Fairmont Hotel, with is principal place of business in the County of Alameda, State of California, located at 41 Tunnel Rd, Berkeley, CA 94705; and
Whereas, Claremont Club & Spa is committed to providing adults with disabilities the opportunity for career exploration, preparation, and potential employment via internships; and

Whereas BAS, as part the Berkeley Unified School District is committed to maximizing learning potential with students with intellectual, physical, emotional and learning differences by implementing curriculum within the context of work experiences, thereby maximizing the generalization of academic material to “real world” applications; and

Whereas EBI, a private non-profit organization, is committed to providing career exposure, skill assessment, training and on-going support to adults with disabilities in work settings; and

Whereas all parties are interested in collaborating to replicate and build on the success of the Project SEARCH program at Children’s Hospital Medical Center in Cincinnati, Ohio.

NOW, THEREFORE, IT IS HEREBY AGREED as follows:

TERM

1. The term of this MOU shall be for three (3) years. The commencement date shall be, January 22, 2018 (“Commencement Date”) and unless sooner terminated under any provision hereof, this Agreement shall end on January 21, 2021 (“Term”). If the Parties intend to further renew this

MOU after the Term, this can only be done by a separate writing executed by the Parties that is approved by each Party's governing body prior to the end of the Term.

CLAREMONT CLUB & SPA SERVICES

2. Claremont Club & Spa shall:

- a. Accept eight (8) students with disabilities annually to participate in the Project SEARCH Program.
- b. Identify a liaison to EBI/BAS to assist in communication and coordination of department internships.
- c. Provide a suitable area at no charge (preferably a separate room) for small group instruction and training.
- d. Provide adequate storage space for supplies, equipment and program needs.
- e. Provide training sites in order for a functional curriculum to be implemented through "hands on" instruction in the context of training.
- f. Provide each intern with uniforms, badges, and other programmatic materials for training and internship participation.
- g. Assist in coordinating interviews with department staff at identified training sites.
- h. Provide written and/or oral feedback to EBI Project SEARCH Assistant Director and/or Job Coach regarding interns' performance in all internship activities.
- i. Consult the Project SEARCH Assistant Director supporting Project SEARCH Interns and supervising Project SEARCH staff regarding any concerns regarding Project SEARCH staff or intern performance
- j. Shall not utilize the services of any intern pursuant to this agreement to displace or replace any Claremont Club & Spa or Fairmont Hotel employee, to impair contracts or services or to fill any vacant position during the internship period.

BERKELEY ADULT SCHOOL SERVICES

3. BAS shall:

- a. Provide a credentialed Career Tech Ed teacher for the agreed upon scheduled hours to meet the educational and training needs of the interns.
- b. Provide appropriate instruction in accordance with the standards set by the California Department of Education, the Berkeley Unified School District, and the Claremont.
- c. Implement a functional curriculum, mutually approved by BAS and EBI, which is specifically designed to meet the competencies based upon job descriptions, handbooks, code of ethics, and other Claremont specific requirement of the Claremont departments for targeted training sites during classroom time.

- d. Document student attendance and outcomes for the California Department of Education for the operation of the class.
- e. Select, train, supervise and evaluate adult education teachers assigned to Project SEARCH at the Claremont.
- f. Provide the appropriate rate of pay to the adult education teacher assigned to the Project SEARCH program at the Claremont as bargained for by their “employee representatives”.
- g. Govern matters of discipline, grievances, and other terms of employment for the adult education teacher assigned to Project SEARCH at the Claremont in accordance with Berkeley Unified School District personnel policies.
- h. Provide substitute personnel in accordance with BAS standard procedures in the event substitute teachers are required to temporarily fill any particular instructional vacancy.
- i. Work in collaboration with EBI to provide education, outreach, marketing and recruitment to ensure that all eligible students receive equal access to the opportunity to participate in the Project SEARCH program.
- k. Instruct Project SEARCH interns as to the Claremont rules and policies to be adhered to while performing training activities.
- l. Award certificates of competency to students who have successfully completed the program.
- m. Provide instruction at the agreed upon schedule. Any change must be negotiated between the BAS Program Director, EBI Project SEARCH Director, and the Claremont.

EBI SERVICES

4. EBI shall:

- a. Recruit, interview, screen, and provide on-boarding for all Project SEARCH interns. (Obtain CA State Department of Rehabilitation eligibility for services, Regional Center of the East Bay funding for services, provide travel training, and provide support in obtaining all required uniform items)
- b. Ensure that each intern or their conservator has consented in writing to participation in the Project SEARCH program and the release of the student record information necessary to support the Project SEARCH Program.
- c. Ensure that all Project SEARCH interns meet applicable health, background, and employment screenings and immunizations as required by the Claremont.
- d. Make suggestions regarding training site safety to ensure that requirements are met and that the health, safety and welfare of interns are maximized.
- e. Advise Project SEARCH interns regarding appropriate professional apparel.

- f. Ensure that all students are kept informed of current program expectations, activities and standards and ensure that interns successfully meet those expectations and standards.
- g. Provide the services of a job coach to provide instruction during the internship period of the program and to assist the BAS teacher during the classroom period of the program for the agreed upon scheduled hours to meet the educational and training needs of the students.
- h. Work in collaboration with the Claremont to analyze potential training sites and training tasks throughout departments and analyze potential adaptations that may be used for interns with disabilities to ensure accuracy and maximum productivity of training tasks.
- i. Assist in implementing a functional curriculum which is specifically designed to meet the competencies generated by the Claremont for targeted training sites.
- j. Select, train, supervise and evaluate the job coaches assigned to Project SEARCH at the Claremont through the EBI Project SEARCH Assistant Director.
- k. Provide the appropriate rate of pay to the job coaches assigned to the Project SEARCH program at the Claremont as bargained for by their "employee representatives".
- l. Govern matters of discipline, grievances, and other terms of employment for the job coaches assigned to Project SEARCH at the Claremont in accordance with EBI personnel policies.
- m. Provide substitute personnel in accordance with EBI standard procedures in the event they are required to temporarily fill any job coaching vacancy.
- n. Assure that all interns are kept informed of current program expectations, activities and standards and ensure that the supports are provided to assist interns to successfully meet those expectations and standards.
- o. Instruct Project SEARCH interns as to the Claremont policies and procedures to be adhered to while performing training activities
- p. Terminate the participation in the program of any intern when it is determined that the intern is not meeting performance standards required by the Project SEARCH program or the Claremont.
- q. In coordination with CA State Department of Rehabilitation and the Regional Center of the East Bay, maintain accurate records of intern performance.
- r. Provide proof of insurance coverage and by providing certificate of liability insurance and Worker's Compensation coverage upon request.
- s. Provide worker compensation and payment of intern wages and all associated payroll costs per regulations through the CA Department of Developmental Services

TERMINATION

- 5. Any party may terminate this MOU with or without cause upon thirty (30) days written notice to the other Party(ies).

WAIVER

- 6 No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

INDEMNITY

7. Claremont Club & Spa, a Fairmont Hotel, shall hold harmless, indemnify, and defend BAS/BUSD, EBI, and, its officers, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this MOU, but only in proportion to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Claremont Club & Spa, its officers, employees or agents. Claremont Club & Spa also agrees to hold harmless, indemnify, and defend BAS/BUSD and EBI and its officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to Claremont Club & Spa in connection with the performance of the Agreement, but only in proportion to the extent such liability, loss, expense attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Claremont Club & Spa, its officers, employees, or agents. This provision survives termination of this Agreement.
8. BAS/BUSD shall defend, indemnify and hold harmless Claremont Club & Spa, a Fairmont Hotel and EBI, its officers, agents, and employees from any and all liabilities, loss expense or claims from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Agreement but only in proportion to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the Berkeley Unified School District, its officers, employees, instructors or agents or students.
9. EBI shall defend, indemnify and hold harmless Claremont Club & Spa and BAS/BUSD, its officers, agents, and employees from any and all liabilities, loss expense or claims from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Agreement but only in proportion to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of EBI, its officers, employees, instructors or agents. This provision survives termination of this Agreement.

INSURANCE

10. BAS/BUSD shall provide self-insurance coverage and provide copy of its certificate of Self Insurance for Liability and Worker's Compensation Liability.
11. EBI shall provide self-insurance coverage and provide copy of its certificate of Self Insurance for Liability and Worker's Compensation Liability.

GENERAL PROVISIONS

13. Each Party to this MOU agrees to meet all Federal, State, County local laws and regulations for the services so far as applicable to that Party's obligations under this MOU..
 14. This MOU is by and among three (3) independent contractors and is not intended to and shall not be construed to create the relationship between the Parties of agent, servant, employee, partnership, joint venture, or association. This MOU represents the entire agreement of the Parties with the respect to the subject matter of this MOU. This MOU may be amended only by a writing signed by all Parties.
 15. This MOU: is entered into under, and subject to the laws of, the State of California. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in San Francisco, CA before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction.
 16. The Parties agree that the relationship of the interns and the Claremont is that of an internship and not as employer-employee. The Claremont shall provide the interns with the learning opportunities offered by the experience through the Project SEARCH Program. The Parties agree that
 - i. The primary benefit of the training/internship is for the intern.
 - ii. The interns will not displace regular employees. The Claremont derives no immediate advantage from the activities of the interns, and on occasion, its operations may actually be impeded.
 - iii. The interns are not guaranteed a permanent job at the end of the program and not entitled to any preference for any job.
 - iv. The students are not entitled to wages for the time spent in the internship and Project SEARCH Program from the Claremont, but will be paid under CA State Department of Developmental Services' Paid Internship Program through EBI.
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2. **MODIFICATIONS OF AGREEMENT:** This Agreement may be supplemented, amended or modified only by the mutual agreement of the Parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both Parties.
 3. **SEVERABILITY:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of the Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
 4. Any notices required to be given under this MOU shall be in writing and shall be deemed effective when (a) personally delivered, (b) mailed by certified or registered mail, return receipt requested, or (c) deposited with a comparably reliable postal delivery service (such as Federal Express), addressed as follows:

Claremont Club & Spa, A Fairmont Hotel

41 Tunnel Road

Berkeley, CA 94705

Attention: Diane Binder

Telephone: 510.618-1580 ext. 11

East Bay Innovations

2450 Washington Ave Suite 240

San Leandro, CA 94577

Attention: Executive Director,

Tom Heinz

Telephone: 510.618-1580 ext. 11

Berkeley Adult School

1701 San Pablo Avenue

Berkeley, CA 94702

Attention: Principal, Tom Reid

Telephone: 510-644-8960

IN WITNESS THEREOF, the Parties hereto have executed this MOU as of the day and year appearing below written.

FHR Claremont Hotel Management Company LLC

Signed by its agent

Fairmont Hotels & Resorts (Maryland) LLC

By: _____

Date: _____

East Bay Innovations

By: _____

Date: _____

Berkeley Adult School

Date: _____