

Third Party Training Agreement

This Third-Party Training Agreement (the "Agreement") dated January 1, 2014 is entered into between Collin County Community College District (the "District") and Robert C. Gates, OD (the "Vendor") (the Vendor and the District are collectively referred to herein as the "Parties") regarding instructional services to be rendered by Vendor on behalf of the District.

1. Recitals

In entering into this Agreement, the Parties agree to the following recitals:

- a. District is a community college authorized to provide educational services under Texas Education Code Chapter 130.
- b. Vendor is a Licensed Professional and has skills in providing educational services.
- c. District desires to retain Vendor to provide certain educational services, and Vendor desires to be so retained.
- d. For and in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as set forth below.

2. Retention

District retains Vendor and Vendor accepts the retention upon the terms and conditions set forth in this Agreement.

3. Duties

Vendor will provide the following services (the "Services"):

- a. Instruct students in the following coursework: Ophthalmic Assistant, Ophthalmic Technician, and Contact Lens Training.
- b. Provide all curriculum, equipment, textbooks and other necessities required for the completion of the coursework.
- c. Provide District with daily student attendance records, as needed by district.
- d. Provide District with completed signed class roll within three days of the end of the course.
- e. Provide instructors with all necessary and appropriate credentials in accordance with all applicable laws.
- f. Vendor will adhere to the District's refund policy and will not invoice District for students who have refunds approved by the District.

Vendor will provide the Services in a good and workmanlike manner, giving advice and making recommendations that are in accordance with all applicable laws and regulations using the same degree of care, skill and prudence that would be customarily exercised for Vendor's own account, in a manner Vendor reasonably believes to be in the best interest of District as an independent company hiring consulting services to assist it in achieving its objectives.

District will retain the ultimate authority and responsibility over the overall policy, operation and assets of District, including but not limited to the sole authority to manage and supervise all operations of District. In particular, District will maintain control of the course curriculum and Vendor will not deviate from that course curriculum.

Except as otherwise set forth by this Agreement, notwithstanding any of the foregoing, Vendor will not have any authority to bind District or otherwise commit District contractually.

4. Period

The term for providing the Services under this Agreement will commence on January 1, 2014. At the end of the one year term, the Agreement shall automatically renew annually unless terminated or otherwise modified in writing by one or both of the parties, or unless earlier terminated pursuant to Section 7 hereof. Notwithstanding the foregoing or any other provisions of this Agreement to the contrary, Sections 5 and 6 below will survive the termination of this Agreement.

5. Associations with Co-Workers

Vendor agrees that during the Term and for six months following the termination of this Agreement for any reason, neither Vendor nor Vendor's affiliates will, individually or by acting in concert with others, employ or solicit or attempt to employ or solicit for any employment any of District's employees. Vendor and Vendor's affiliates will not, either directly or indirectly or by acting in concert with others, seek to induce or influence any employee to leave District's employment.

6. Non-Competition

Vendor shall not, for a period of six months following the termination of this Agreement, solicit

any current or former customer of District for the purpose of providing instructional services of the same general nature as provided by District. Further, Vendor shall not, for a period of six months following the termination of this Agreement, accept employment with any entity, other than District, that provides instructional services of the same general nature as provided by District. This restriction applies whether the form of the employment is as a direct employee, independent contractor, owner, partner, or Vendor.

7. Termination of Agreement

This Agreement will terminate upon the occurrence of any of the following events:

- a. The expiration of the Term as set forth by this Agreement.
- b. The filing by Vendor of a petition of bankruptcy, the adjudication of Vendor as bankrupt or insolvent, or the assignment of Vendor's assets for the benefit of creditors pursuant to any bankruptcy law, the dissolution of Vendor's business, or the appointment of a receiver for Vendor.
- c. Written notice to Vendor from District of termination for just cause, where "just cause" means (a) the failure or inability for any reason (other than illness or incapacity) of Vendor to devote the required business time to the businesses of District, (b) the commission by Vendor of any act involving willful misconduct, moral turpitude or gross negligence, or the commission by Vendor of any act or the suffering by Vendor of any occurrence or state of facts which in the District's opinion renders Vendor incapable of performing Vendor's duties under this Agreement, (c) any material breach by Vendor of any of the terms of, or the failure to perform any covenant contained in, this Agreement, or (d) a material violation by Vendor of policies established by District with respect to the operation of its business and affairs.
- d. Written notice from District to Vendor of termination for any reason other than as set forth in this section.

8. Compensation

As compensation for the services rendered under this Agreement, Vendor will receive a fee (the "Fee") as follows:

\$1,500.00 per each enrolled student per Ophthalmic Assistant and/or Ophthalmic Technician course. District will collect the full tuition of \$1,995.00 per student per

course. \$495.00 of such amount shall be compensation to District.

\$900.00 per each enrolled student per Contact Lens Technician course. District will collect the full tuition of \$1,200.00 per student per course. \$300.00 of such amount shall be compensation to District.

(The term "per student" refers to each student who remains enrolled in the course after the third class meeting in compliance with the Texas Higher Education Coordinating Board census date.)

District will collect the full tuition per student per course. Vendor will invoice the District within 30 days of the completion of training per student provided the student attended class through the third class period census date.

District will pay the Fee in lump sum.

Vendor will not charge, nor be entitled to compensation for, any overtime services. The Fee will be the sole compensation payable to Vendor for the Services and no additional compensation or fee will be payable by District to Vendor because of any benefit gained by District directly or indirectly through Vendor's consulting efforts under this Agreement, nor will District be liable in any way for any additional compensation or fee for consulting services unless District has expressly agreed to it in writing.

During the Term, Vendor will not be entitled to receive any benefits from District and will instead be personally responsible for any benefits, including but not limited to health, life, dental, and long- and short-term insurance. Vendor waives all rights to any fringe benefits offered by District.

In the event of the termination of Vendor's engagement prior to the completion of the Term because of reasons in ¶7b, ¶7c or ¶7d, Vendor will be entitled only to the Fee (as defined below) earned as of the date of termination.

9. Independent Contractor Status

District and Vendor agree that Vendor is an independent contractor and will in no way be considered to be an agent, partner, joint venturer or employee of District and, accordingly, Vendor will not be entitled to any benefits, coverages, or other privileges made available to employees of District. Vendor will only consult and render advice and will not undertake to commit District to any course of action in relation to third persons, except as requested by District. Vendor will not represent that Vendor is an employee or agent of District. District will not deduct any social security or income taxes from any payments made to Vendor. During the term of

Vendor's retention, Vendor will be compensated on a 1099 basis and accordingly Vendor will be liable for any and all worker's compensation payments and federal, state, and local employment, sales, use, excise, and other taxes arising out of Vendor's performance of this Agreement and will furnish evidence of such compliance or an applicable waiver of requirements to District upon request.

Vendor will be solely liable for all taxes, including social security and unemployment compensation taxes, with respect to Vendor's employees, if any. Vendor will indemnify and hold District harmless against all liability with regard to Vendor's employees, if any, under any applicable laws.

10. Confidentiality

In the course of performance of this Agreement, Vendor may be exposed to the business, products, or sales of District and its affiliates, customers, and clients, including without limitation any student identification data, inventions, discoveries, works in progress, trade secrets, reports, investigations, experiments, research, know-how, techniques, processes, manuals, codes, software, computer applications and programs, disks, tapes, data sheets, files, records, documents, drawings, sketches, designs, plans, proposals, marketing and sales programs, customer lists, customer mailing lists, supplier lists, financial projections, cost summaries, pricing and other formulas and all information derived from or related thereto as well as all other concepts, ideas, materials, or information prepared or performed for or by District and its affiliates, customers, and clients. Vendor agrees to hold in strict confidence and not to use or disclose any confidential information for or to any person, firm, corporation, association, or entity either before, during, or after the Term, except as authorized by District or as is necessary for the performance of duties under this Agreement but only after having received written consent from District, which will be limited to the specific Confidential Information described in the consent. Vendor will take such protective measures as are reasonably necessary to preserve the confidentiality of Confidential Information and will exercise its best efforts to prevent any unauthorized parties from gaining access to it.

11. Intellectual Property

Vendor acknowledges that during the course of performance of this Agreement, any copyrightable contributions made by Vendor to the substance of the curriculum materials will be prepared by Vendor pursuant to the scope of Vendor's engagement by District within the meaning of 17 U.S.C.A. §101. In no way limiting the foregoing, Vendor agrees that such work constitutes a contribution to one or more collective works and that the Parties agree for purposes of 17 U.S.C.A.

§101 that such materials constitute a work made for hire.

12. Third Parties

During the course of performance of this Agreement, Vendor will not use the services of any third party not employed by Vendor in rendering the Services, without the prior written consent of District. To the extent that such consent is given, Vendor will enter into a written agreement with these persons, if any, in which such person agrees to the restrictions set forth in this Agreement.

13. Breach by Vendor

In the event of any breach by Vendor of this Agreement, District will be entitled, if it so elects, to institute and prosecute proceedings in any court of competent jurisdiction, either in law or in equity, to enjoin Vendor from violating any of the terms of this Agreement, to enforce the specific performance by Vendor of any of the terms of this Agreement, and to obtain damages, or any of them, but nothing contained in this Agreement will be construed to prevent such remedy or combination of remedies as District may elect to invoke. Vendor acknowledges that the injury that would be suffered by District as a result of a breach of the provisions of this Agreement would be irreparable and that an award of monetary damages to District for such a breach would be an inadequate remedy. Consequently, District will have the right, in addition to any other rights it may have, to obtain injunctive relief to restrain any breach or threatened breach or otherwise to specifically enforce any provision of this Agreement, and District will not be obligated to post bond or other security in seeking such relief. The failure of District to promptly institute legal action upon any breach of this Agreement will not constitute a waiver of that or any other breach of this Agreement. Vendor acknowledges and recognizes that the enforcement of the provisions set forth in this Agreement will not interfere with Vendor's ability to pursue a proper livelihood. Vendor recognizes and agrees that the enforcement of this Agreement will be necessary to ensure the preservation and continuity of the business and goodwill of District and its affiliates.

14. Breach by District

In the event of any breach of this Agreement by District, Vendor will be entitled, if Vendor so elects, to institute and prosecute proceedings in any court of competent jurisdiction, either in law or in equity, to enjoin District from violating any of the terms of this Agreement and to obtain damages, or any of them, but nothing contained in this Agreement may be construed to prevent such remedy or combination of remedies as Vendor may elect to invoke. The failure of Vendor to promptly institute legal action upon any breach of this Agreement will not constitute a waiver of that or any other breach of this Agreement.

15. Limitations on Warranty or Liability

Except as set forth in this Agreement, District will not be liable for any damages whatsoever, including without limitation, any loss of profits, loss of business, loss of use of data, interruption of business, or for direct, indirect, special, incidental or consequential damages of any kind, even if District has been advised of the possibility of such damages and notwithstanding any failure of essential purpose of any limited remedy. Vendor agrees to defend, indemnify and hold the District, its employees, representatives, agents, contractors, patrons, invitees, and licensees harmless from any and all liability for and against any injury or damage relating to, arising from or connected with this Agreement, including: (i) the condition of and the use and occupancy of the any District facilities, including but not limited to any injury or damage caused by, relating to, connected with, or arising from the condition of the such facilities or the actions or inactions of Vendor, its employees, agents, contractors, patrons, invitees, licensees or others under its control; (ii) all actions or inactions of Vendor, its employees, agents, contractors, patrons, invitees, licensees or others under its control; and (iii) all costs, attorney's fees, expenses and liability incurred by the District in connection with any suit, claim, action or proceeding brought on account of the events and transactions described herein. The limitation of liability and indemnity set forth herein are an essential part of the bargain under this Agreement.

16. Attorney Fees

In the event of any litigation concerning any controversy, claim, or dispute between the Parties that arises out of or relates to this Agreement or the breach or interpretation of this Agreement, the prevailing party will be entitled to recover from the losing party reasonable expenses, attorneys' fees, and costs incurred in the litigation or in the enforcement or collection of any judgment or award rendered in the litigation. The term "prevailing party" means the party determined by the court to have most nearly prevailed, even if the party did not prevail in all matters, and not necessarily the party in whose favor a judgment is rendered. If any party defaults under this Agreement, the defaulting party will pay all the expenses, attorneys' fees, and costs incurred by the other party in connection with the default, whether or not any litigation is commenced.

17. Notices

All notices, requests, demands, payments, and other communications made pursuant to this Agreement will be in writing and will be deemed properly given if hand delivered, if sent by mail, telegraph, or overnight courier service, or if transmitted by telecopy or similar service to the Parties either at the address set forth below for such person or at such other address as such

person may from time to time specify by written notice. Any such notice will be deemed to have been delivered on the date of delivery if hand delivered, upon confirmation if transmitted by telecopy or similar service, or as of three days after depositing such notice with the United States postal service if sent by mail or if delivered to an overnight courier service and will be delivered with postage prepaid, return receipt requested, and properly addressed as follows:

District:

Ralph G. Hall
District Vice President of Administration and
CFO
Collin County Community College District
3452 Spur 399
McKinney, TX 75069

Vendor:

Robert C. Gates, OD
Tax ID 46-3235577
214.507.9357
4017 Eagle Pass, Plano TX 75023

18. Binding Agreement

This Agreement and the rights and obligations under this Agreement will be binding upon and inure to the benefit of District and Vendor and their respective heirs, personal representatives, and successors and assigns.

19. Assignment

District will have the right to assign this Agreement to any affiliate or to its successors or assigns in its sole discretion. The rights, duties, or benefits of Vendor are personal to Vendor and no such right, duty, or benefit may be assigned by Vendor to any other person or entity without the written consent of District.

20. Other Obligations

Vendor represents and warrants that Vendor has not, as of the execution of this Agreement, assumed any obligations inconsistent with those contained in this Agreement.

21. Third-Party Beneficiaries

The Parties acknowledge and agree that District's affiliates, customers, and clients are express third-party beneficiaries of the covenants and agreements of Vendor.

22. Entire Agreement

This Agreement constitutes the entire agreement between District and Vendor and supersedes any and all prior or contemporaneous agreements between the Parties, either written or oral, with respect to the transactions contemplated within this Agreement.

23. Amendment

This Agreement may be modified or amended only by an instrument in writing and signed by all Parties.

24. Waiver

Any waiver of the terms and conditions of this Agreement must be in writing and signed by all the Parties and any such waiver will not be construed as a waiver of any other terms and conditions of this Agreement. A waiver by either of the Parties as to any particular breach will not constitute or be considered as a waiver of any similar or other breach or default thereafter.

Joseph B. Hall 2/4/14
Ralph G. Hall
District Vice President of Administration and
CFO
Collin County Community College District

25. Severability

If any provision of this Agreement is found to be illegal, invalid, or unenforceable under present or future laws, the provision will be fully severable and the remaining provisions will remain in full force and effect. Any provision of this Agreement held illegal, invalid, or unenforceable will remain in full force and effect to the extent not so held. In lieu of the provision held illegal, invalid, or unenforceable, there will be automatically added as part of this Agreement a provision as similar in its terms to such invalid provision as may be possible and may be legal, valid, and enforceable.

VENDOR:

Robert C. Gates, OD
4017 Eagle Pass, Plano TX 75023

Robert C. Gates, OD
Robert C. Gates, OD

26. Counterparts

This Agreement may be executed in several counterparts and each such counterpart will be deemed an original copy of this Agreement when so executed and the counterparts will, when taken together, constitute and be one and the same instrument.

27. Further Assurances

Each of the Parties agrees to perform any further acts and to execute and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.

28. Captions

The captions and headings in this Agreement are made for purposes of convenience and general reference only and will not be construed to define, limit, or otherwise affect any of the terms or provisions of this Agreement.

29. Governing Law

This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to the principles of conflicts of laws of the State of Texas. Venue for any lawsuit regarding enforcement or interpretation of this Agreement will be in Collin County, Texas.

30. Execution

The Parties have entered into this Agreement with an effective date of January 1, 2014 and agree to be bound by its terms, as evidenced by the signatures of their authorized representatives appearing below:

DISTRICT:

**COLLIN COUNTY COMMUNITY COLLEGE
DISTRICT**