

OHLONE COMMUNITY COLLEGE DISTRICT

MEMORANDUM

TO: Board of Trustees

FROM: Gari Browning CONSENT

DATE: November 12, 2008

SUBJECT: Ratification of Community Education Agreements

The following Community Education Agreement is presented to the Board of Trustees for ratification:

Agreement with:	Dates	Class Description
Xu DeZheng	10/8/08 thru 10/13/08	2-day Qigong Symposium

RECOMMENDATION

The President/Superintendent recommends that the Board of Trustees ratify the above listed Agreement.

STANDARD AGREEMENT
OHLONE COMMUNITY COLLEGE DISTRICT
 CONTRACT NUMBER
375 -0901

THIS AGREEMENT, made and entered into this 1st day of July, 2008 in the State of California, USA, by and between Ohlone Community College District, hereafter called the District, through its duly elected and appointed governing board and the person(s), company, corporation or firm listed below, hereafter called the Contractor.

CONTRACTOR <u>Pure Shaolin Kung Fu School</u>	Tax ID Number <u>20-4678594</u>
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WITNESSETH: That the Contractor for and in consideration of the covenants, conditions, agreements, and stipulations of the District hereinafter expressed, does hereby agree to furnish to the District the services and materials, as follows:

Contractor to provide all services and materials necessary for completion of 2-day Qigong Symposium as further described herein, hereinafter called the "Event", for Ohlone College Newark Center for Health, Sciences, & Community Education of Ohlone Community College District in accordance with the Exhibit A-Service Provisions and General Conditions, Exhibit B-Insurance Requirements, Exhibit C—Supplementary Terms, which are all attached and, by this reference, made a part of this Agreement.

The terms and provisions of this Agreement are intended to be complementary. Any conflict between the provisions of this Agreement shall be resolved in favor of the following order: Most recent Amendment, this Agreement, Exhibit A, Exhibit C, Exhibit B.

The total amount paid to Contractor under this Agreement shall not exceed **sixteen thousand eight hundred dollars (US\$16,800.00.)** Payment shall be made after receipt of invoice in duplicate and upon approval of Robin Kurotori, upon satisfactory completion. The Term of this Agreement shall be October 8, 2008 through October 13, 2008.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto, upon the date first above written.

DISTRICT	CONTRACTOR
BY Authorized Signature: X 	BY Authorized Signature: X 
Printed name and title of person signing: Leta Stagnaro, Ed.D. Associate Vice President, NCHS	Printed name and title of person signing: <u>Master Xu DeZheng</u>
39399 Cherry Street, Newark, CA 94560 (510) 742-2301 fax: (510) 742-2332	Address <u>Pure Shaolin Kung Fu</u> <u>840 Old County Road</u> <u>Belmont, CA 94002</u>

SERVICE PROVISIONS and GENERAL CONDITIONS

1. The Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of Ohlone Community College District. Contractor assumes the full responsibility for the acts and/or omissions of his/her employees or agents in connection with the services to be provided under this Agreement. Contractor shall assume full responsibility for payment of all federal, state, and local taxes or contributions, including unemployment insurance, Workers' Compensation, social security, and income taxes, with respect to Contractor or Contractor's employees.
2. The Contractor agrees to indemnify, defend and save harmless Ohlone Community College District, its officers, governing board members, agents, volunteers and employees from any and all claims, demands, or losses accruing or resulting to any and all persons, firms or corporations who may be injured or damaged in any way by the Contractor, directly or indirectly, in connection with or during the performance of this Agreement, except for liability for damages referred to above which result from the sole negligence or willful misconduct of the District, its officers, employees or agents.
3. Without the written consent of the District, Contractor may not assign or subcontract, in whole or in part, this Agreement.
4. Contractor shall submit itemized invoices in duplicate to the District's Accounts Payable Department referencing this contract number. Payment shall be made per the terms specified on page 1 of this Agreement and only after acceptance of the Event and the approval of the person(s) designated on page 1 of this Agreement.
5. Contractor accepts this contract or agreement under the terms and conditions specified herein and performance shall be deemed acceptance thereof. Conflicting terms on Contractor's form or proposal are rejected and shall be deemed a material alteration hereof. Notwithstanding inclusion or reference herein should any such terms be conflicting with these General Conditions or the Service Provisions, these terms shall apply, unless specifically excluded.
6. The consideration to be paid Contractor, as provided herein shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including, but not limited to, materials, taxes, insurance, reproduction, renderings, travel and per diem, unless otherwise expressly so provided.
7. Contractor's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of Contractor's profession. Contractor agrees that all reports, recommendations, technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays, and video productions prepared for, written for, submitted to the District and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, unless fully disclosed to the District in advance, except that submitted to Contractor by District as a basis for such services. Contractor understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title, and interest in said matters, including the right to secure and maintain the copyright, trademark, and/or patent of said matter in the name of the District. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance, and distribution of the matters, for any purpose and in any medium.
8. The services completed herein must meet the approval of the District and shall be subject to the District's general right of inspection to secure the satisfactory completion thereof. Contractor agrees to comply with all federal, state, and local laws, rules, regulations, and ordinances that are now or may in the future become applicable to Contractor, Contractor's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations. Contractor shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.

9. The Contractor's signature affixed hereon shall constitute a certification under the penalty of perjury under the laws of the State of California that the Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12940 and 12926.1.
10. This Agreement shall be governed and interpreted in pursuant to the laws of the State of California with venue in Alameda County. If any provision of this Agreement is deemed illegal, invalid unenforceable or void by any court of competent jurisdiction, such provision shall be deemed stricken and deleted herefrom, but all remaining provisions will remain and continue in full force and effect. The failure of District or Contractor to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition. Any provision required by law to be included in this Agreement, shall be deemed inserted herein and interpreted as though it were originally included. Time is of the essence in this Agreement.
11. District may, at any time, with or without cause, terminate this Agreement and compensate Contractor only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Contractor. District may terminate this Agreement upon giving written notice of intention to terminate for cause. Cause shall include: (a) material violation of this Agreement by the Contractor; or (b) any act by Contractor exposing the District to liability to others for personal injury or property damage; or (c) Contractor is adjudged as bankrupt, Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of Contractor's insolvency. Written notice by District shall contain the reasons for such immediate termination. In the event of such termination, the District may cease all activities under this Agreement and shall have no further financial obligation to Contractor. If termination for cause occurs prior to Term, as state on page one, Contractor shall reimburse District for any and all expenses incurred in the execution of this Agreement. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District. Contractor may, with cause, terminate this Agreement. Cause shall include: (a) material violation of this Agreement by the District; or (b) any act by District exposing the Contractor to liability to others for personal injury or property damage; or (c) District is adjudged as bankrupt, District makes a general assignment for the benefit of creditors, or a receiver is appointed on account of District's insolvency. Written notice by Contractor shall contain the reasons for such intention to terminate and unless within thirty (30) days after service of such notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the thirty (30) days cease and terminate. This Agreement will automatically terminate at the end of the District's fiscal year (June 30) without prior notice, unless otherwise stated in the Agreement.
12. All notices or demands to be given under this Agreement by either party to the other shall be in writing and given either by: (a) personal service or (b) by U.S. Mail with postage prepaid. Service shall be considered given when received, if personally served, or, if mailed, on the third day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section.
13. The parties to the Agreement shall be excused from performance hereunder during the time and to the extent that they are prevented from obtaining, delivering or performing by act of God, fire, strike, loss or shortage of transportation facilities, lockout, or commandeering of materials, products, plants or facilities by the government, when satisfactory evidence thereof is presented to the other party, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the party not performing.
14. Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time expended in the execution of the services under this Agreement. Contractor represents that he/she is not an employee of the District and will not utilize the services of any District employee in the execution of this Agreement.
15. This Agreement and any exhibits attached hereto constitute the entire agreement between the parties and supersedes any prior or contemporaneous understanding or agreement with respect to the services contemplated, and may be amended only by a written amendment executed by both parties to the Agreement.

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INSURANCE

The Contractor shall maintain insurance adequate to protect him from claims under Workman's Compensation Acts, and from claims for damages for personal injury, including death, and damage to property, which may arise from operations under the Agreement. The Contractor may be required to file with the District certificates of such insurance. Failure to furnish such evidence, if required, may be considered default of the Contractor.

- a. The Contractor shall not commence work under this Agreement until it has obtained all the insurance required under this paragraph and satisfactory proof of such insurance has been submitted to the district and said insurance has been approved by the District, if requested.
- b. The District shall be named as additional insured and be furnished a 30 day written notice prior to cancellation or any reduction in coverage. The Contractor shall provide the District with an additional insured endorsement naming the District, its officials, officers, agents, employees and volunteers as an additional insured.
- c. Minimum Limits of Insurance:
 - i. General Liability with combined single limits of \$1,000,000.
- d. Any deductibles or self-insured retentions must be declared to and approved by the District.
- e. Insurance from the Contractor shall be primary as respects the District, its officers, officials, employees and volunteers.

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SUPPLEMENTARY TERMS

The Event shall include Delegates as professional-level instructors for the Symposium from 8:00am – 6:00 pm Saturday and Sunday, teaching the four new forms of Qigong. David (DeZheng) Xu shall perform and instruct, as appropriate for the Event. He will teach with the delegates and will bring several of his students to act as group leaders for breakout sessions. Additionally, he and his group will perform – informally on Saturday at the end of training, and formally in a Symposium conclusion on Sunday afternoon. The District will provide an appropriate venue and sell tickets to the Event. Lunch for all delegates will be provided by the Symposium during the Event.

It is expressly understood that the fees paid to Contractor will include providing the following with respect to this Agreement:

1. Room and Board for the delegates – 3 days (October 10, 11,12)
 - a. Hotel – 3 nights (at \$150 / night / delegate)
 - b. Meals – Friday breakfast, lunch, dinner; Saturday breakfast, dinner; Sunday breakfast, dinner. (at \$75 / day / delegate for three days.)
 - c. Workshop stipend paid to up to 8 delegates at \$500 / day
 - d. Transportation
 - i. Airport pick up for all delegates on arrival to US
 - ii. Transport to hotel
 - iii. Transportation from hotel to Qigong Symposium October 11 and 12
 - iv. Return transportation to hotel from Event October 11 and 12
 - v. Return transportation to airport Monday, October 13
 - e. Sightseeing tour of San Francisco (to be arranged on Thursday, October 9 or Friday, October 10)
 - i. Includes meals, transportation, and reasonable allowance for souvenirs/spending money
 - f. Teaching and Performance Services Performed for Qigong Symposium by Contractor

It is further agreed and understood that the total dollar commitment by the District for the above shall not exceed a maximum of \$16,800 for 8 delegates or \$13,500 for 6 delegates. Should fewer than 6 delegates attend, fees and maximum commitment shall be renegotiated. If there is a failure for both parties to agree on such fees in a timely manner, District shall have the right to immediately terminate this Agreement without further cause.

Should the delegation not get their VISAs or have any other difficulty with travel to the United States, the District reserves the right to reschedule or cancel the event and terminate this Agreement.

In the event the District must cancel the event, this contract is null and void. Notice of Termination to be delivered to Contractor at least one week in advance of the contract Term.

Exhibit C

This Agreement is predicated on maximum capacity for the event. Should the Event get 100 or fewer participants, the fees for both services rendered and the amount of other compensation shall be renegotiated in good faith.

The District is not responsible for any transportation, including but not limited to transportation to and from the San Francisco bay area or for any taxes associated with performance under this Agreement.

The District is not responsible for personal liability, injury or loss of any kind related to the execution of this Agreement.