

Memorandum of Understanding 2008- 2009 Academic School Year

This Memorandum of Understanding (hereinafter "MOU" or "Agreement") is entered into as of September 16, 2008 by and between the Chabot—Las Positas Community College District, a California community college district (hereinafter "CLPCCD") and San Leandro Unified School District, a California K-12 public school district (hereinafter "SLUSD") for the purpose of collaborating as partners on the development of a GEAR UP Program. The CLPCCD and SLUSD are collectively referred to in this Agreement as the "Parties".

RECITALS

WHEREAS, CHABOT COLLEGE (hereinafter "CHABOT"), located at 25555 Hesperian Blvd, Hayward, CA 94545, a college within the CLPCCD, offers both Certificate and Associate Degrees and the development of college culture to local K-12 districts by utilizing the CHABOT's pre-college program Educational Talent Search;

WHEREAS, JOHN MUIR MIDDLE SCHOOL, located at 1444 Williams St., San Leandro, CA 94577, and BANCROFT MIDDLE SCHOOL, located at 1150 Bancroft Ave., San Leandro, CA 94577, are middle schools within SLUSD;

WHEREAS, SLUSD and CLPCCD are jointly in the process of creating and implementing a pre-college/tutoring program at multiple locations within SLUSD, for the enhancement of SLUSD's Gear Up Program;

WHEREAS, SLUSD has received funding to implement a GEAR UP program at two middle schools, two local churches and San Leandro high school;

WHEREAS, SLUSD seeks to utilize the expertise and experience of CHABOT staff as consultants to contribute to the advancement and furtherance of the development of the Gear Up Program;

WHEREAS, it is the intention of the Parties for CLPCCD/CHABOT staff to assist SLUSD in maximizing the funding resources available to support and sustain the Gear UP Program; and

WHEREAS, CLPCCD and SLUSD desire to set forth the principles on which the CLPCCD/CHABOT and SLUSD will operate the pre-college/tutoring program and to specify the contributions of each partner in this MOU;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **Program Support.** CLPCCD/CHABOT staff shall develop and create a pre-college tutoring program in collaboration with SLUSD, as follows:
 - a. SLUSD shall provide work space at JOHN MUIR MIDDLE SCHOOL AND BANCROFT MIDDLE SCHOOL for CLPCCD/CHABOT staff to provide tutorial services to JOHN MUIR MIDDLE SCHOOL and BANCROFT MIDDLE SCHOOL students. The specific location of the work space will be determined at a future date.
 - b. CLPCCD/CHABOT staff shall work with SLUSD in collaborative grant planning and pre-college tutoring program design.
 - c. CLPCCD/CHABOT staff shall work with Bancroft and John Muir Middle to identify and promote appropriate college trips, college fairs and college related Workshops.
 - d. CLPCCD/CHABOT shall hire a 90% GEAR-UP Coordinator; and will attend AVID tutor training
 - e. CLPCCD/CHABOT shall recruit 8 tutors and send them to AVID tutor training. They will then work at the scheduled school, Bancroft Middle School and John Muir Middle Schools.
 - f. CLPCCD will provide on campus visit for approx. 150 students per year to local 4- year colleges during the Fall of 2008
 - g. CLPCCD/CHABOT shall provide two college fairs in the spring semester (One college fair per school site);
 - h. CLPCCD/CHABOT shall provide eight evening workshops consisting of college awareness, financial aid and the A-G requirements. Spanish will be offered as needed.
 - i. CLPCCD/CHABOT coordinator will attend monthly GEAR-UP meetings

Compensation. SLUSD shall compensate CLPCCD as follows:

GEAR-UP Coordinator: 0.9 FTE @	\$58,533
4 Tutors @ \$11 x 3 hrs x 2 days/week x 32 weeks	\$ 8,448
4 Tutors @ \$11 x 2 hrs x 2 days/week x 32 weeks	\$ 5,632
Benefits	\$20,487
Travel 300 miles/ month x .485 x 10months/year	\$ 1,455
Bus Rentals	\$ 1,000
Materials and Supplies	<u>\$ 250</u>

Total Compensation

\$95,805

CHABOT will negotiate reimbursement schedule with SLUSD prior to services being rendered.

3. **Finger printing.** By execution of this MOU, CLPCCD agrees that CHABOT staff will follow and implement Education Code Section 45125.1, which requires employees of entities providing services to school districts to be fingerprinted by the California Department of Justice for a criminal records check.

CLPCCD expressly acknowledges that its employees and contractors working with SLUSD, including CHABOT staff, shall be required to submit fingerprints in a manner authorized by the Department of Justice, together with the requisite fee as set forth in Education Code Section 45125.1. CLPCCD further agrees not to permit any employee or contractor of CLPCCD or CHABOT to come in contact with students until the Department of Justice has ascertained that the employee or contractor has not been convicted of a serious or violent felony.

CLPCCD shall fulfill all of the above fingerprinting requirements at its own expense. This may include being invoiced by SLUSD for employees/contractors processed through SLUSD fingerprinting policies, procedures and requirement

4. **Indemnification.** Government Code Section 895.2 imposes certain tort liability jointly upon public agencies solely by reason of such public agencies being parties to an agreement as defined in Government Code Section 895. Therefore, the Parties hereto, as between themselves, pursuant to the authorization contained in Government Code Sections 895.4 and 895.6, each assumes the full liability imposed upon it or any of its officers, agents, representatives or employees by law for injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement, to the same extent that such liability would be imposed in the absence of Government Code Section 895.2.

To achieve this purpose, CLPCCD agrees to defend, indemnify and hold harmless SLUSD, its Board of Trustees, officers, agents and employees, individually and collectively, from and against all costs, losses, claims, demands, suits, actions, payments and judgments, including legal and attorney fees, arising from personal or bodily injuries, property damage or otherwise, due to the negligence, error or omission, of CLPCCD brought or recovered against any of the above that may arise for any reason from or during or to be alleged to be caused by CLPCCD, including all costs, losses, claims, demands, suits, actions, payments and judgments which may be incurred solely by virtue of Governmental Code Section 895.2.

To the same extent, SLUSD agrees to defend, indemnify and hold harmless the CLPCCD, its Board of Trustees, officers, agents and employees, individually and collectively, from and against all costs, losses, claims, demands, suits, actions,

payments and judgments, including legal and attorney fees, arising from personal or bodily injuries, property damage or otherwise, due to the negligence, error or omission, of the SLUSD brought or recovered against any of the above that may arise for any reason from or during or to be alleged to be caused by the SLUSD, including all costs, losses, claims, demands, suits, actions, payments and judgments which may be incurred solely by virtue of Governmental Code Section 895.2.

5. **Insurance.** Both Parties shall procure and maintain the following minimum insurance coverage during the term of the agreement:

A. **Liability Insurance**

1. **Coverage**

Without limiting the above indemnification provision and during the term of this Agreement, the Parties shall obtain and maintain, and shall require their subcontractors to obtain and maintain, liability insurance coverage in the amount of one million dollars (\$1,000,000.00). Each Party's insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by the other Parties, and shall be provided and maintained at the Party's own expense.

2. **Verification of Insurance**

SLUSD agrees to provide a Certificate of Insurance verifying liability coverage in the amount of one million dollars and provide an endorsement naming the Chabot-Las Positas Community College District as an additional named insured. Similarly, CLPCCD agrees to provide a Certificate of Insurance verifying liability coverage in the amount of one million dollars and provide an endorsement naming San Leandro Unified School District as an additional named insured.

3. **Notification of Incidents, Claims or Suits**

The Parties mutually agree to notify one another of any accident or incident relating to services performed under this Agreement which involves injury or property damage which may result in the filing of a claim or lawsuit against any of the Parties, and, of any actual third party claim or lawsuit arising from or related to services under this Agreement.

B. **Workers Compensation Insurance.**

Each Party shall obtain and maintain Workers Compensation insurance for its respective employees and agents during the coverage term of this Agreement in conformance with the laws of the State of California and applicable federal laws. Both parties agree to provide one another with a worker's compensation certificate of insurance upon request.

6. **Non-Discrimination.** The Parties agree that in the hiring of staff, the selection and use of volunteers, and in the implementation of the GEAR UP program, all persons will be treated equally and without regard to race, color, religion, ancestry, national origin, sex, age, sexual orientation, marital status or disability, and in compliance with all anti-discrimination laws of the United States of America and the State of California.

7. **Independent Contractor Status.** The Parties hereby acknowledge that they are independent contractors. As such, each Party shall be liable for any debts, obligations, acts and omissions relating to its own agents, representatives, students or employees, including the deduction of all federal, state and local income taxes, social security, FICA and other charges, if any, to be deducted from the compensation of its employees. Furthermore, in no event shall this Agreement be construed as establishing the relationship of agent, servant, employee, partnership, joint venture, association or any similar relationship between the parties hereto. As independent contractors, each party will be solely responsible for determining the means and methods for performing the services described herein. Each party understands and agrees that other party is engaged in an independent business or enterprise and the party shall have no right to direct or control in any way or to any degree the manner of other party's performance hereunder. Each party further understands that it is not authorized and shall not make any agreement, contract or representation on behalf of the other party or create any obligation, express or implied, on the part of the other party.

Neither CLPCCD nor any of its agents, representatives, students or employees shall be considered agents, representatives, or employees of SLUSD as a result of this Agreement. Furthermore, each and every person employed by CLPCCD who is providing services to SLUSD under this Agreement shall, at all times, remain an employee of CLPCCD. CLPCCD employees shall not, at any time, or in any way, be entitled to sick leave, vacations, retirement, or other fringe benefits from the SLUSD, nor shall they be entitled to overtime pay from the SLUSD. SLUSD will make no State or Federal unemployment insurance or disability insurance contributions on behalf of CLPCCD and/or its agents or employees. Neither CLPCCD nor its employees shall be included in the classified or faculty service, have any property rights to any position, or have any of the rights that an employee of the SLUSD may otherwise have in the event of termination of this Agreement.

Neither SLUSD nor any of its agents, representatives, students or employees shall be considered agents, representatives, or employees of CLPCCD as a result of this Agreement. Furthermore, each and every person employed by SLUSD who is providing services to CLPCCD under this Agreement shall, at all times, remain an employee of SLUSD. SLUSD employees shall not, at any time, or in any way, be entitled to sick leave, vacations, retirement, or other fringe benefits from the CLPCCD, nor shall they be entitled to overtime pay from the CLPCCD. CLPCCD will make no State or Federal unemployment insurance or disability insurance contributions on behalf of SLUSD and/or its agents or employees. Neither SLUSD nor its employees shall be included in the classified or faculty service, have any property rights to any

position, or have any of the rights that an employee of the CLPCCD may otherwise have in the event of termination of this Agreement.

8. **Notices.** Any notice required or desired to be served by any Party shall be personally delivered or delivered by United States Mail, postage-prepaid, certified, return receipt requested, or by reputable document delivery services that provides a receipt showing the date and time of delivery. Notices delivered by mail shall be effective at 5:00 p.m. on the second calendar day following dispatch. Notices personally delivered or delivered by document delivery service shall be effective upon receipt. Notices shall be delivered to the Parties at the following addresses:

To: San Leandro Unified School District
14735 Juniper St.
San Leandro, CA 94579
Attn: Christine Lim
Superintendent
Tel: (510) 667-3500
Fax: (510) 667-3569

To: Chabot-Las Positas Community College District
5020 Franklin Drive
Pleasanton, California 94588
Attn: Lorenzo Legaspi
Vice Chancellor, Business Services
Tel: (925) 485-5203
Fax: (925) 485-5255

9. **Termination.** This MOU shall commence on September 16, 2008 (the "Effective Date") and shall continue until June 30, 2009, unless sooner terminated pursuant to this paragraph. Either party may terminate this MOU prior to expiration upon 30 days written notice. In the event of termination of this Agreement prior to June 30, 2009, the hourly compensation due to CLPCCD under this Agreement for services rendered will be calculated and paid by SLUSD.

10. **Attorneys' Fees.** In the Event of a dispute under this Agreement, each Party shall bear its own attorneys' fees and costs.

11. **Non-Assignment.** No Party shall assign this Agreement or any right or privilege any Party might have under this Agreement without the prior mutual written consent of all Parties hereto, which consent shall not be unreasonably withheld, provided that the assignee agrees in a written notice to all Parties to carry out and observe each applicable Party's agreements hereunder.

12. **Non-Liability of Officials.** No officer, member, employee, agent, or representative of either Party shall be personally liable for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon, shall be personally

enforced against any such officer, official, member, employee, agent, or representative.

13. **Third Party Beneficiaries.** Nothing in this Agreement shall be construed to confer any rights upon any party not signatory to this Agreement.

14. **Captions.** The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.

15. **No Waiver.** Any failure of a party to enforce that party's right under any provision of this Agreement shall not be construed or act as a waiver of said party's subsequent right to enforce any of the provisions contained herein.

16. **Counterparts.** This Agreement may be executed in any number of counterpart copies, all of which shall constitute one and the same Agreement and each of which shall constitute an original.

IN WITNESS WHEREOF, the San Leandro Unified School District and the Chabot-Las Positas Community College District have entered into this Agreement as of the Effective Date.

Lorenzo Legaspi
Vice-Chancellor Business Services
Chabot-Las Positas
Community College District

Christine Lim
Superintendent
San Leandro Unified
School District