

Memorandum of Understanding

Between Chabot-Las Positas Community College District, Chabot College and R.T. Fisher Educational Enterprises, Inc. for the Fall 2008 – Spring 2009 academic term

This Independent Contractor Services Agreement (“Agreement”) is made by and between Chabot-Las Positas Community College District, Chabot College (“CHABOT”), a governmental public educational entity, and R.T. Fisher Educational Enterprises, Inc. (“RTF”), a California corporation, in connection with the implementation of the Second Wind CAHSEE Preparation Project (“Program” or “Second Wind”). Each of CHABOT and RTF is sometimes referred to herein individually as a “Party” and together as the “Parties.”

RECITALS

A. RTF is in the business of, and has considerable expertise in, developing and implementing educational programs similar to Second Wind. CHABOT desires to engage RTF, and RTF desires to be engaged, to provide the services required to implement the Second Wind project on behalf of CHABOT, to the extent and on the terms and conditions set forth herein.

B. CHABOT and RTF acknowledge that RTF will provide five (5) five week California High School Exit Exam (CAHSEE) test prep courses. Each series will provide intensive academic instruction on the structure, format and content of the CAHSEE as well as provide test preparation strategies and techniques to student participants. RTF will provide student materials for each session.

C. CHABOT and RTF acknowledge that RTF will assist in the development and implementation of a public awareness campaign for the Second Wind CAHSEE Prep Project. The public awareness campaign will include both a media and grass roots outreach approach.

D. CHABOT and RTF acknowledge that RTF will develop and implement a kick-off event for the Second Wind CAHSEE Prep Project. RTF will plan and manage the kick-off event as well as provide an events coordinator and event staff.

E. CHABOT and RTF acknowledge that RTF will serve on an advisory committee for the Second Wind CAHSEE Prep Project.

NOW, THEREFORE, the Parties hereby agree as follows:

AGREEMENT

1. Term of Agreement. The term of this Agreement shall commence as of September 2008 (“Effective Date”), and continue until July 2009 (“Term”), unless earlier terminated as provided in **Section 10**.

2. Project Management and Responsibilities. The specific services to be provided by RTF and the respective roles and responsibilities of each of the Parties, commencing on the Effective Date, are set forth on **Exhibit A**.

3. Compensation; Payment Terms.

(a) As compensation to RTF for the services performed under this Agreement, CHABOT shall (i) pay RTF \$85,000 which includes administrative costs. For the purpose of this Section 4(a), "Administrative Costs" shall mean any cost, direct or indirect, that supports the implementation of the contracted services. Direct costs typically include salary costs related to preparing workshop curriculum and materials and monitoring activities. Indirect costs typically include expenses for general administration of the Program (personnel, payroll, accounting, procurement, data processing, etc.).

(b) RTF shall provide to CHABOT monthly invoices in the amount of \$10,625 beginning October.2008 and ending May 2009. Specifically invoices shall include the following information:

- (i) Days/dates of service
- (ii) Description of services rendered
- (iii) Any additional data required by CHABOT

CHABOT shall pay RTF all undisputed amounts due under each invoice within fifteen (15) business days of its receipt of each such invoice.

4. Personnel; Fingerprinting.

(a) All personnel performing services behalf of RTF shall be compensated directly by RTF as RTF's employees or subcontractors, as applicable. All personnel performing responsibilities on behalf of CHABOT shall be compensated directly by CHABOT as CHABOT's employees or subcontractors, as applicable.

(b) By execution of this Agreement, CHABOT and RTF acknowledge that California Education Code Section 45125.1 ("Section 45125.1") applies to the services provided in connection with the Program. Section 45125.1 requires that employees of entities providing such services to school districts must be fingerprinted by the California Department of Justice for a criminal records check.

(c) RTF expressly acknowledges and agrees that: (i) RTF and all of RTF's employees and contractors working with students must submit fingerprints in a manner authorized by the Department of Justice, together with the requisite fees as set forth in Section 45125.1; (ii) RTF shall not permit any employee or contractor to come in contact with students until the Department of Justice had ascertained that the employee or contractor has not been convicted of a serious or violent felony; (iii) RTF shall certify in writing to CHABOT that none of its employees or contractors who may come in contact with students have been convicted of a serious or violent felony; and (iv) RTF shall provide CHABOT a list of names of its employees who may come in contact with students. RTF shall fulfill these requirements at its own expense.

(d) RTF expressly acknowledges and agrees that all staff or volunteers supervising students participating in the Program shall meet all health screening requirements of

CHABOT. RTF shall provide proof of health screening to the CHABOT before permitting supervision by any staff or volunteer.

5. Insurance. RTF shall maintain at its own cost and expense policies of comprehensive liability insurance and property damage insurance coverage as set forth below. The Parties agree that CHABOT and its officers, agents, employees and representatives shall be specifically named in any and all such policies of insurance as additional named insureds. Any and all policies of insurance maintained by RTF pursuant to this Section shall be deemed primary to any potentially applicable policy or policies of insurance maintained by CHABOT and/or its officers, agents, employees and representatives.

(i) Worker's Compensation.

(ii) General Liability and Property Insurance: Comprehensive general liability coverage shall be in the amount of not less than five (5) million dollars – occurrence based. Property coverage shall be for replacement value.

(iii) RTF may obtain indemnity coverage for errors and omissions for its directors and officers and any other insurance the RTF deems appropriate or determines is required in accordance with applicable law.

RTF shall notify CHABOT within five (5) days of any claim or lawsuit filed against RTF that relates to the operation of services to SECOND WIND where RTF provides services pursuant to SECOND WIND.

6. Indemnification; Limitation of Liability; Disclaimer of Warranties.

(a) RTF hereby agrees to defend, indemnify and hold harmless CHABOT and its subsidiaries, affiliates, officers, directors, contractors, agents and employees (collectively, "CHABOT Representatives") from and against any and all suits, claims, liabilities, demands or causes of action of any third party alleging damages, losses and expenses, including reasonable attorney's fees and costs of suit, arising from (i) death or injury to person or property as a result of any negligent or intentional act or omission of RTF or any of RTF's subsidiaries, affiliates, officers, directors, contractors, agents and employees ("RTF Representatives"); or (ii) any material breach by RTF of any its obligations under this Agreement.

(b) CHABOT hereby agrees to defend, indemnify and hold harmless RTF and the RTF Representatives from and against any and all suits, claims, liabilities, demands or causes of action of any third party alleging damages, losses and expenses, including reasonable attorney's fees and costs of suit, arising from (i) death or injury to person or property as a result of any negligent or intentional act or omission of CHABOT or any of CHABOT Representatives; or (ii) any material breach by CHABOT of any its obligations under this Agreement.

(c) EXCEPT WITH RESPECT TO THE PARTIES' INDEMNITY OBLIGATIONS AND BREACHES OF SECTION 9, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PROGRAM, INCLUDING,

WITHOUT LIMITATION, LOST PROFITS, LOST GOODWILL, WORK STOPPAGE OR IMPAIRMENT OR LOSS OF OTHER GOODS, SOFTWARE OR DATA, AND WHETHER ARISING OUT OF ANY BREACH OF WARRANTY, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR IF SUCH DAMAGE COULD HAVE BEEN REASONABLY FORESEEN.

(d) EXCEPT AS EXPRESSLY PROVIDED HEREIN, RTF'S SERVICES ARE PERFORMED AND THE MATERIALS DEVELOPED AND/OR PROVIDED ARE PROVIDED ON AN "AS IS" BASIS, AND TO THE FULLEST EXTENT PERMITTED BY LAW, RTF EXCLUDES ALL OTHER EXPRESS AND IMPLIED TERMS, WARRANTIES OR REPRESENTATIONS ARISING BY LAW OR OTHERWISE INCLUDING WITHOUT LIMITATION FITNESS FOR A PARTICULAR PURPOSE.

7. Ownership of Intellectual Property. The Parties acknowledge and agree that in the performance of Services hereunder, RTF may utilize certain materials that are proprietary to RTF, including without limitation RTF's proprietary materials that comprise The Quad™. Accordingly, any rights in and to any tangible or intangible property provided by RTF in connection with the Program, including The Quad™ and other intellectual property such as copyrights, trade secrets, patents and know-how previously developed or acquired by RTF and/or developed by or on behalf of RTF during the Term (whether in connection with the Project or otherwise) (collectively, "RTF Materials"), shall remain and shall at all times be the property of RTF.

8. Confidentiality. CHABOT acknowledges and agrees that the RTF Materials (including but not limited to the materials that comprise The Quad™), as well as any other oral or written information disclosed by RTF, that are not generally known outside of RTF or otherwise confer on RTF a competitive advantage, including, without limitation, information relating to RTF's operations, finances, services, marketing plans or personnel, is confidential information of RTF (collectively "RTF Confidential Information"). CHABOT agrees to receive and maintain all RTF Confidential Information in the strictest confidence for the purpose for which it is provided and shall not use Confidential Information for its own benefit or disclose it or otherwise make it available in whole or in part to third parties without the prior written consent of RTF. CHABOT agrees to limit the disclosure of RTF Confidential Information to only those employees and students of CHABOT who need the RTF Confidential Information in connection with the implementation of the Program and to advise all employees of RTF's rights in the RTF Confidential Information. Nothing in this Agreement shall be construed as granting or conferring any rights by license or otherwise in any RTF Confidential Information, patents, trademarks, copyrights or other intellectual property rights of RTF except as necessary for the limited purposes of the implementation of the Program.

9. Termination. Prior to the expiration of the Term, CHABOT may at any time terminate this Agreement, for any reason in CHABOT's sole discretion, upon written notice to RTF, and RTF may at any time terminate this Agreement for any reason in RTF's sole discretion, upon written notice to CHABOT. In the event of any such early termination, CHABOT may secure the required services from another third party or otherwise in any manner it deems appropriate, consistent with the requirements of the ASSETs Grant and the Code, and

CHABOT shall compensate RTF for all services satisfactorily performed through the date of such termination in accordance with the compensation provisions set forth in **Section 4**. Upon termination of this Agreement, CHABOT promptly shall deliver or cause to be delivered to RTF all previously undistributed copies of the RTF Materials, together with all copies of any documents, data and materials of any sort which were furnished by RTF to CHABOT. CHABOT shall not have the right to continue use of the RTF Materials following the termination of this Agreement for any reason.

10. Notices. All notices, requests, and other communications under this Agreement shall be in writing and mailed to the proper addresses as follows:

If to CHABOT: Chabot-Las Positas Community College District,
Attn: Lorenzo Legaspi
5020 Franklin Drive
Pleasanton, CA 94588

Chabot College
Attn: Melinda Matsuda
25555 Hesperian Boulevard
Hayward, CA 94545

If to RTF: R.T. Fisher Educational Enterprises, Inc.
520 3rd Street, Suite 109
Oakland, CA 94607

11. Survival. The terms of **Sections 4 and 7 through 17** hereof shall survive expiration or earlier termination of this Agreement.

12. Assignment. Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party.

13. Independent Contractor. RTF is an independent contractor and is responsible for paying all RTF's taxes and insurance, including the insurance required pursuant to **Section 6**.

14. No Agency or Partnership. Nothing in this Agreement shall constitute the appointment of a Party as an agent or legal representative of the other Party for any purpose whatsoever. This Agreement shall not be deemed to create any relationship of agency, partnership or joint venture between the Parties, and no Party shall make any such representation to any third party.

15. Entire Agreement. This Agreement constitutes the only agreement, and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof. All Exhibits hereto are a material part of this Agreement and are incorporated by reference. This Agreement, including any Exhibits hereto, may not be amended or modified, except in a writing signed by all Parties to this Agreement.

16. Miscellaneous. In the event of any controversy, claim or dispute between the Parties arising out of or related to this Agreement, or the alleged breach thereof, the prevailing Party shall, in addition to any other relief, be entitled to recover its reasonable attorneys' fees and costs of sustaining its position. Each provision of this Agreement shall be separately enforceable, and the invalidity of one provision shall not affect the validity or enforceability of any other provision. This Agreement shall be interpreted and construed in accordance with the laws of the State of California applicable to contracts to be performed entirely within such State. Time is of the essence of this Agreement and of each and every provision hereof. The failure of any Party to exercise any of its rights under this Agreement shall not be deemed a waiver of such rights.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CHABOT:

CHABOT-LAS POSITAS COMMUNITY COLLEGE
DISTRICT, CHABOT COLLEGE

By: _____
Name: Lorenzo Legaspi
Title: Vice Chancellor, Business Services

RTF:

R.T. FISHER EDUCATIONAL ENTERPRISES, INC., a
California corporation

By: _____
Name: Robyn Fisher
Title: President

EXHIBIT A

ROLES AND RESPONSIBILITIES

1. **Services to be Provided by RTF/RTF Responsibilities.**
 - (a) Collaborate with CHABOT on the integration of the services with CHABOT's regular SECOND WIND Program and share responsibility for Program quality.
 - (b) Responsible for hiring, supervising and evaluating all other personnel and contractors providing services under the Program (except with respect to services being provided by CHABOT).
 - (c) Provide all materials and equipment necessary for the facilitation of the services except for the materials to be provided by CHABOT. Ensure that all services and benefits provided (including materials, equipment and supplies) will be secular, neutral and non-ideological.
 - (d) RTF shall obtain and keep in force all licenses, permits and certificates necessary for the performance of services under this Agreement.

2. **CHABOT's Responsibilities.**
 - (a) CHABOT will provide adequate facility space at no charge to RTF for the services to be implemented.
 - (b) CHABOT will provide a staff representative to serve as a liaison between participants and the Program.
 - (c) CHABOT will recruit, manage, and supervise participants attending services provided by RTF.
 - (d) Collaborate with RTF on the integration of the services with the SECOND WIND program and share responsibility for Program quality.
 - (e) Ensure that the Program overall is managed in compliance with all applicable laws.