

EDUCATION AFFILIATION AGREEMENT – RENEWAL

THIS AGREEMENT is made and entered into this 8th day of September 2020 , by and between Chabot-Las Positas Community College District (“University”) and Fremont Hospital (“Facility”).

RECITALS

WHEREAS, University desires to provide appropriate clinical learning experiences to its students in its clinical programs (“Students”);

WHEREAS, the parties mutually desire to advance student training and education, and assist in meeting the demand for health care personnel, and to make available better health services to patients in the community; and

WHEREAS, it is deemed advisable and in the best interests of the parties to establish an affiliation for the purposes of carrying out these objectives.

NOW, THEREFORE, for and in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

I. Mutual Responsibilities

- A. Assignment of Students. Students subject to this Agreement are assigned to Facility by University for the purpose of developing the Student’s clinical competence (knowledge, procedures/skills, clinical problem solving, and professional attitudes and behaviors).
- B. Schedule of Assignments. Prior to the initiation of any program for Students, the University shall provide information to the Facility concerning the number of Students, possible dates of assignment, the names and pertinent information about the Students, and the objectives for Students’ clinical education experience. The Facility and University shall jointly plan the schedule of student assignments to Facility, including the number of Students, the hours of attendance, and the schedule of activities at the Facility. Facility shall determine the maximum number of Students accepted by Facility for assignment to a clinical area.
- C. Designated Representative. The Facility and University shall each appoint a designated representative to coordinate the clinical education experience, and to work with the University’s instructors and Students to facilitate a meaningful experience.
- D. Changes in Curriculum, Program and Staff. Each party shall keep the other informed of changes in curriculum, program and staff which may affect the clinical education experience. Representatives of both parties shall meet periodically to review the program, and to make such suggestions and changes as needed.

- E. Compliance with Applicable Laws. The parties shall in the performance of this Agreement comply with all applicable laws, rules, regulations, and policies affecting agreements of this nature.
- F. Nondiscrimination. Each party agrees that it will not discriminate against any Student in violation of any applicable Federal, State or Municipal laws on the basis of sex, race, religion, national origin, disability or veteran status, or other protected classification.
- G. Relationships Between Facility, University and Students.
1. Independent Entities. This Agreement shall not be construed to create a general partnership, joint venture or any other organizational combination of the parties, nor shall it authorize either party to act as an agent for, or bind the other party in any manner. Facility and University shall be and remain independent entities with respect to the performance of their respective duties and obligations hereunder. There will be no payment of charges or fees between University and Facility.
 2. Students. The parties acknowledge that the Students of the University are fulfilling specific requirements for their educational or clinical experience as part of a degree and therefore, the Students of the University are not to be considered employees of either the University or the Facility, regardless of the nature or extent of the acts performed by them, for the purposes of Worker's Compensation, employee pay or benefit programs, or any other purpose. The Facility shall not pay any remuneration or wages to any Student.
- H. Right to Withdraw Student from Program.
1. By University. University may withdraw a student from the program at any time, upon written notice to the Facility.
 2. By Facility. Facility will have the right to take immediate temporary action to correct a situation where a student's actions endanger patient care or where, in the sole discretion of the Facility the Student's work, conduct, or health is deemed detrimental to patients or others. As soon as possible thereafter, Facility will notify the University of the action taken. All final resolutions of the Student's academic status in such situations will be made solely by the University after reviewing the matter and considering whatever factual information the Facility provides for the University; however, Facility reserves the right to terminate the use of its facilities by a particular Student where necessary to maintain its operation free of disruption and to ensure quality of patient care.
- I. Inspection of Records. In accordance with the Social Security Act and Regulations thereunder or as otherwise provided by law, University, Facility, third party payors, the Secretary of Health and Human Services, and the Comptroller General, and their authorized representatives, shall have access to all data and records relating to the nature and extent of costs and services provided under this Agreement for a period of four (4) years after the furnishing of such services, or for such other period of time as may be required by law. When any of the requirements of this Agreement are provided by subcontract with a value of Ten Thousand Dollars (\$10,000.00) or more over a twelve (12) month period or when otherwise required by law, the right to access to all books and records pertaining to the services shall be included in each subcontract.

II. University Responsibilities

- A. University will provide the names and information pertaining to relevant education and training for all Students enrolled in the clinical education program within a reasonable time before the beginning date of the clinical education program. University is responsible for supplying any additional information required by Facility as set forth in this Agreement, prior to the arrival of Students. University will notify Facility in writing of any change or proposed change in a Student's status.
- B. University will assign only those Students who have satisfactorily completed those portions of University curriculum that are prerequisite to Program participation.
- C. University shall advise each affiliating Student of the need to obtain criminal background and child abuse clearance checks prior to assignment to the Facility, and will provide verification of those checks to Facility.
- D. Liability Insurance. University shall, at all times during the term of this Agreement, maintain the following insurance coverage for itself and its employees and agents:
 - 1. Professional liability insurance coverage, with a minimum of \$1,000,000 each occurrence and a minimum of \$1,000,000 in the annual aggregate, applying to professional acts and services as defined and required by this Agreement; and
 - 2. Commercial general liability insurance coverage, naming Facility as additional insured, with a minimum of \$1,000,000 each occurrence, \$1,000,000 in the annual aggregate, applying to bodily injury, property damage, and liability assumed under any contract. General liability insurance coverage may be satisfied by a combination of primary and excess or umbrella coverage.

The above coverage amounts shall be the actual indemnity coverage limit and shall not be reduced by any expense or costs of litigation including attorney's fees. In the event that such insurance is purchased on a "claims-made" basis, upon termination of this Agreement, University shall either purchase extended reporting period endorsement ("tail") insurance coverage or continue the claims made policy for services rendered during the term of this Agreement in an amount equal to and otherwise upon the same terms identified herein.

University shall provide Facility with Certificates of Insurance, evidencing the insurance coverages listed above, ten (10) days prior to the start of this Agreement and thereafter upon renewal or replacement of each coverage. The required insurance shall not contain any exclusions or endorsements, which are not acceptable to Facility. Facility shall have the right to terminate this Agreement upon written notice to University for any breach of this section.

Failure of Facility to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Facility to identify a deficiency from evidence that is provided shall not be construed as a waiver of University's obligation to maintain such insurance.

E. Representations and Warranties.

1. University represents that each person performing the services under this Agreement (1) has been educated and trained consistent with applicable regulatory requirements and Facility policy; (2) is appropriately licensed, certified or registered, as applicable, to provide the services as contemplated herein; and (3) has appropriate knowledge, experience and competence as are appropriate for his or her assigned responsibilities as required by Facility. If University's personnel will be on site at Facility's premises, then University additionally represents that it evaluates each student's performance and each person performing services under this Agreement (1) has been oriented to Facility policies and procedures; (2) has verified the person's health status as required by his or her duties in providing the services under the Agreement and as required by all applicable laws and regulations (collectively, "Law") and advised each student that they must provide proof of immunizations directly to the Facility; (3) has performed criminal background checks and/or pre-employment verification of convictions for abuse or neglect when required by Law; and (4) has evaluated and reviewed each person's references, when applicable. University shall provide Facility with evidence of compliance with this paragraph upon request.
2. University also represents and warrants to Facility that neither University nor any person providing services on behalf of University is a "Sanctioned Provider" meaning that neither University nor such representatives (i) is currently excluded, debarred, or otherwise ineligible to participate in the Federal health care programs, including but not limited to Medicare, Medicaid or TRICARE, as defined in 42 USC § 1320a-7b(f) (the "Federal health care programs"); (ii) is convicted of a criminal offense related to the provision of health care items or services and has not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; and (iii) is under investigation or otherwise aware of any circumstances which may result in University or any person providing services on behalf of University being excluded from participation in the Federal health care programs. This shall be an ongoing representation and warranty during the term and University shall immediately notify Facility of any change in the status of the representation and warranty set forth in this Section. Any breach in this representation shall be cause for Facility to terminate this Agreement immediately.
3. University further represents and warrants that no physician who is or may be a referral source to Facility (as said term is defined at 42 U.S.C. section 1395x(r) nor any "immediate family member" of a physician owns or holds and "ownership or investment interest" in University. For purposes of the preceding sentence, the term "immediately family member" shall have the meaning described in 42 C.F.R. section 411.351 and the term "ownership or investment interest" shall have the meaning described in 42 U.S.C. section 1395nn(a)(2).

- F. Confidentiality of Patient Information (HIPAA Requirements). University shall ensure that its Students, faculty members, and staff members agree to protect to the fullest extent required by law the confidentiality of any patient information generated or received by them in connection with their clinical experience, including those laws and regulations governing the use and disclosure of individually identifiable health information under Federal law, specifically 45 CFR parts 160 and 164.

1. University shall require each student, faculty member, and staff member who participates in the program to sign a patient confidentiality agreement which the Facility will provide.
2. University further specifically acknowledges that in receiving, storing, processing, or otherwise handling any records of Facility patients, University, its Students, faculty members, and staff may be bound by Federal laws governing addictive disease patients, including 42 C.F.R. Part 2.
3. University agrees that, if necessary, it will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by law.
4. University's obligation to maintain the confidentiality of Facility patient information shall survive termination of this Agreement.
5. Solely for the purpose of defining the student's role in relation to the use and disclosure of Facility's protected health information, such Student's are defined as members of the Facility's workforce, as that term is defined by 45 CFR 160.103, when engaged in activities pursuant to this agreement. However, such Students are not and shall not be considered to be employees of the Facility. University will notify each student of his or her status and responsibilities pursuant to this Agreement.

G. Confidentiality of Facility Information. University understands and agrees that in connection with this Agreement, University and its Students may acquire competitively sensitive information which is neither known to nor ascertainable by persons not engaged with Facility, and which may cause Facility to suffer competitively or economically if such information becomes known to persons outside of Facility. Such information may be in the form of trade secrets, or in the form of confidential information. Confidential information shall include, but not be limited to Facility's business and business development plans, patient or supplier lists. Consequently, except as provided in this paragraph or otherwise required by law, University agrees not to directly or indirectly use or disclose to any individual or entity any Confidential Facility information at any time. If required by University's duties under this Agreement and with the consent of Facility, University may disclose information relating to the operations of the Facility to members of the medical staff, state licensing agencies and the Joint Commission. University will not disclose information relating to the operations of the Facility to third-party reimbursement agencies (whether public or private) unless disclosure is required by this Agreement, applicable statutes or regulations, or the terms of applicable agreements for reimbursement.

H. Publications. University will prohibit the publication by the Students, faculty or staff members of any material relative to educational experience that has not been reviewed by the Facility, in order to assure that infringement of patient's rights to privacy is avoided. Any article written by a student must clearly reflect that neither the University nor Facility endorses the article, even where a review has been made prior to publication.

I. Health Requirements. University shall advise each affiliating student that they must receive and provide evidence of having received any immunizations and testing, or provide any records regarding relevant health conditions that may be required by Facility. University and the affiliating student shall, to the extent of their respective knowledge, inform Facility of any special health problems or requirements any assigned student may have. University and/or potentially exposed

student/faculty shall be responsible for further recommended testing or follow up. Student is further required to obtain and continue personal Health Insurance, at his/her own expense throughout the term of his/her participation in the Program.

- J. Facility Policies, Rules, and Regulations. University shall ensure that all Students and faculty members shall be familiar with and comply with the Facility's applicable rules, regulations, and policies. University will specifically cover with each Student his or her responsibility to:
1. Observe and respect all patient's rights, confidences, and dignity:
 2. Dress in appropriate attire for the clinical experience as established by the Facility, including name tags, if required: and
 3. Acknowledge that Facility will not be responsible for providing Students with health care, worker's compensation, or other benefits. Further, Students are required to obtain personal Health Insurance benefits for the duration of their participation in the Program at their own cost. In the event of an emergency, Facility agrees to provide Students with first aid emergency care, which expense shall be that of Students, not Facility.
- K. Indemnification. University shall indemnify and hold Facility harmless from and against any and all claims, liabilities, causes of action, losses costs, damages and expenses (including reasonable attorneys' fees) incurred by Facility as a result of any breach of this Agreement or any acts or omissions of University, its employees or agents.
- L. Business Associate Agreement. University shall not have access to Facility patients' PHI and, in the event this occurs, University shall execute Facility's standard Business Associate Agreement.
- M. OIG Exclusion List. University shall perform a query on the Office of Inspector General Website at <http://exclusions.oig.hhs.gov/Default.aspx> with respect to the contracting student to ensure that the student is not on the exclusions database.

III. Facility Responsibilities

- A. Patient Care. The Facility shall retain responsibility for patient care and Students shall not be used to replace Facility employees providing care.
- B. Premises and Equipment. Facility will make available to Students basic supplies and equipment necessary for care of patients or clients and the clinical education program. Within the limitation of facilities, Facility will make available office, library and conference space for Students, if applicable.
- C. Staff Supervision. The Facility shall provide staff supervision, in conjunction with the faculty from University, for the Students in the program.
- D. Orientation. The Facility shall provide Students with training or appropriate written orientation materials to assist Students in the clinical educational experience at Facility.
- E. Student/Faculty Evaluation. Facility will evaluate the performance of the Student on a regular basis using the evaluation form supplied by the University.

F. Emergency Services. On any day when a Student is participating in the clinical education program at its facilities, Facility will provide to such Student necessary emergency health care or first aid for accidents occurring in its facilities. The Student will be responsible for the costs of all care.

IV. Terms of Agreement

A. This Agreement shall commence upon full execution of the parties and shall remain effective for a term of five (5) years. Provided, however, that either party may terminate this contract upon thirty (30) days written notice at any time and for any reason.

B. It is understood and agreed that the parties to this agreement may revise or modify this Agreement by written amendment when both parties agree to such amendment.

C. In the event of termination before any participating student(s) has completed the then-current term, such student(s) shall be permitted to complete the then-current term subject to the applicable terms of this Agreement.

V. Miscellaneous

A. Severability. The invalidity of any provision of this Agreement shall not affect the validity of any other provision.

B. Construction. The parties acknowledge that each party hereto has contributed to the drafting of this Agreement and that the rule of construction that an instrument shall be construed against the drafting party shall have no application to this Agreement.

C. Notice. All notices, demands, requests, or other communications required to be given or sent by University or Facility, will be in writing and will be mailed by first-class mail, postage prepaid, or transmitted by hand delivery or facsimile, addressed as follows:

1. To University
Chabot Las Positas Community College District
Chancellor's Office
Ronald P. Gerhard, Chancellor
7600 Dublin Blvd., 3rd Floor
Dublin, CA 94568-2944
rgerhard@clpccd.org

2. To Facility:
Fremont Hospital
39001 Sundale Dr.
Fremont, CA 94538

D. Assignment. This Agreement or any obligations thereunder shall not be subcontracted or assigned except to an affiliate or purchaser of Facility.

E. Governing Law. This Agreement shall be construed in accordance with the laws of the state in which Facility is located.

- F. Entire Agreement/Merger. This Agreement sets forth the entire agreement between the parties and supersedes all prior or contemporaneous agreements or understandings (whether oral or written), if any, between the parties with respect to the subject matter of this Agreement.
- G. Amendment. No amendment to the Agreement shall be valid unless reduced to writing, signed by an authorized representative of each party.
- H. Captions. All heading or captions used in this Agreement are for ease of reference and will not alter or affect the meaning of any provision of this Agreement.
- I. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed original, but all of which together shall constitute one and the same agreement. Scanned, photocopied and facsimile signatures shall be deemed original signatures.
- J. No Right of Third Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors, legal representatives, nor is anything in this Agreement intended to relieve or discharge the obligations or liability of any third persons to any party to this Agreement, nor shall any provisions give any third person any right of subrogation or action over or against any party to this Agreement. Students described herein are specifically defined as and considered as third parties to this Agreement.
- K. Waiver. Neither the waiver by any of the parties hereto a breach of or a default under any of the provisions of this Agreement, nor the failure of either of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, will thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder.
- L. Limitations on Liability or Remedy. Any limitations on liability and/or remedy provisions in the Agreement, including, but not limited to, damage amount limitations or available remedies, are hereby deleted.
- M. Arbitration.
1. Agreement to Arbitrate. Any controversy or claim arising out of or relating to this Agreement, or the breach, termination or validity thereof, shall be determined by arbitration in the County and State in which Facility is located, in accordance with the provisions of this Paragraph and the arbitration rules of the American Arbitration Association (“AAA”) in effect on the date of this Agreement by a single arbitrator who is selected as provided in Paragraph (b) below. The arbitrator shall base the award on this Agreement and applicable law and judicial precedent. The arbitration shall be governed by the substantive and procedural laws of the State in which Facility is located, applicable to contracts made and to be performed therein. The decision of the Arbitrator shall be binding upon the parties and enforceable in the courts of the State in which Facility is located. Each party shall equally bear the costs of Arbitration.
 2. Selection of Arbitrator. The arbitrator shall be mutually selected by the parties hereto and in the event the parties cannot agree on an arbitrator, then the arbitrator will be selected in accordance with the rules of the AAA in effect on the date of this Agreement.

3. Authority of Arbitrator. The arbitrator shall have the exclusive authority to decide the scope of issues to be arbitrated. Any challenge to the arbitrability of any issue related in any way to the matters or claims in dispute between the parties shall be determined solely by the arbitrator. Also, any challenge to the validity of this arbitration provision or any subpart thereof shall be determined and decided exclusively by the arbitrator.
4. Discovery; Arbitration Hearing. Notwithstanding any AAA discovery rules to the contrary discovery shall be limited to (1) the production, by all parties to the arbitration, to the other parties thereto of all documents and electronic or computer records relevant or pertaining to any of the matters at issue; and (2) to allow each party to the arbitration to take five depositions, none of which may last more than four hours (exclusive of breaks and adjournments). These limits may be relaxed only upon the express agreement of each of the parties to the arbitration and the arbitrator. Notwithstanding any AAA rule to the contrary, the parties hereby agree that once the evidentiary hearing commences, it shall continue day-to-day until completed, with the exception of Saturdays, Sundays and legal holidays. Otherwise, the evidentiary hearing can only be adjourned by agreement of all of the parties and of the arbitrator for a period of time agreed upon by all of them.

IN WITNESS WHEREOF, the parties hereunto set their hands, the day and year first above written.

FACILITY:
Fremont Hospital

UNIVERSITY:
Chabot Las Positas Community College District

By _____
Patricia Williams
Chief Executive Officer

By _____
Ronald P. Gerhard
Chancellor

Date: _____

Date: _____