

## MEMORANDUM OF UNDERSTANDING

July 2012-June 2013

This Memorandum of Understanding (hereinafter "MOU" or "Agreement") is entered into as of 9<sup>th</sup> day of July, 2012 by and between the Chabot-Las Positas Community College District a California community college district (hereinafter "CLPCCD"), on behalf of Chabot College, a California community college (hereinafter "CHABOT") and Contra Costa Community College District, a California community college district (hereinafter "CCCCD") on behalf of Los Medanos College, a California community college (hereinafter "LMC") for the purpose of collaborating as partners on the development and delivery of the California Acceleration Project CHABOT and LMC 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 has been awarded funding from the Walter S. Johnson Foundation to spread accelerated models of developmental English and math to California community colleges;

WHEREAS, LOS MEDANOS COLLEGE (hereinafter "LMC"), located at 2700 East Leland Road, Pittsburg, CA 94565, is the employer of instructors who can provide leadership to other colleges in developing alternative developmental math pathways;

WHEREAS, as part of the California Acceleration Project, CHABOT seeks to utilize the expertise and experience of LMC staff as Math Lead for this project to contribute to the advancement and furtherance of the development and delivery of accelerated models of developmental Math;

WHEREAS, CHABOT and LMC desire to set forth the principles on which CHABOT and LMC will operate the California Acceleration Project 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 the California Acceleration Project in partnership with LMC, as follows:

- a. LMC shall provide instructor who will serve as Math Lead.
- b. CHABOT staff shall work with LMC instructor assigned as Math Lead in collaboration for program development and delivery.
- c. CLPCCD shall compensate LMC for their instructor who will serve as Math Lead for reassigned time at a rate based on the California Chancellor's Office adjunct backfill rate of \$31,250 per semester (100% FTEF) plus an additional enhancement of \$10,000 to be used by the college as needed. The enhancement is provided given that the salary of a full-time faculty member doing the grant work is higher than the adjunct rate.

**2. Compensation.** CHABOT shall compensate LMC for reassigned time according to the following schedule:

<u>Invoicing Time Period</u>	<u>Due to CHABOT</u>	<u>Amount<sup>1</sup></u>
Fall Semester: Aug.-Dec. 2012	1/31/2013	\$30,833.00
Spring Semester: Jan-May 2013	6/15/2013	<u>\$16,808.00</u>
<b>TOTAL:</b>		<b>\$47,641.00</b>

**3. Finger printing.** By execution of this MOU, LMC agrees that LMC 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.

LMC expressly acknowledges that its employees and contractors working with CHABOT, including LMC 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. LMC further agrees not to permit any employee or contractor of LMC 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.

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

**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, CHABOT agrees to defend, indemnify and hold harmless LMC, 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 CHABOT 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 CHABOT, 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, LMC agrees to defend, indemnify and hold harmless CHABOT, 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 LMC brought or recovered against any of the above that may arise for any reason

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<sup>1</sup> These amounts presume LMC will receive an additional \$10,417 each semester from California Community Colleges Success Network (3CSN) administered by Los Angeles Community College District (LACCD). Total compensation for Fall 2012, with enhancement, with 3CSN = \$41,250 (100% FTEF); total compensation for Spring 2013, with enhancement, with 3CSN, = \$27,225 (66% FTEF).

from or during or to be alleged to be caused by the LMC, 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**

LMC 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, CHABOT agrees to provide a Certificate of Insurance verifying liability coverage in the amount of one million dollars and provide an endorsement naming Los Medanos College 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 Faculty Inquiry Network 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 CHABOT nor any of its agents, representatives, students or employees shall be considered agents, representatives, or employees of LMC as a result of this Agreement. Furthermore, each and every person employed by CHABOT who is providing services to LMC under this Agreement shall, at all times, remain an employee of CHABOT. CHABOT employees shall not, at any time, or in any way, be entitled to sick leave, vacations, retirement, or other fringe benefits from the LMC, nor shall they be entitled to overtime pay from the LMC. LMC will make no State or Federal unemployment insurance or disability insurance contributions on behalf of CHABOT and/or its agents or employees. Neither CHABOT 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 LMC may otherwise have in the event of termination of this Agreement.

Neither LMC nor any of its agents, representatives, students or employees shall be considered agents, representatives, or employees of CHABOT as a result of this Agreement. Furthermore, each and every person employed by LMC who is providing services to CHABOT under this Agreement shall, at all times, remain an employee of LMC. LMC employees shall not, at any time, or in any way, be entitled to sick leave, vacations, retirement, or other fringe benefits from the CHABOT, nor shall they be entitled to overtime pay from the CHABOT. CHABOT will make no State or Federal unemployment insurance or disability insurance contributions on behalf of LMC and/or its agents or employees. Neither LMC 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 CHABOT 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: Chabot-LasPositas Community College District  
5020 Franklin Drive  
Pleasanton, California 94588  
Attn: Lorenzo Legaspi  
Vice Chancellor, Business Services

To: Los Medanos College  
Room CC3 425A  
2700 East Leland Road  
Pittsburg, CA 94565  
Attn: Bruce Cutler  
Director of Business Services

**9. Termination.** This MOU shall commence on July 15 (the "Effective Date") and shall continue

until June 30, 2013, 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 December 30, 2012, the hourly compensation due to LMC under this Agreement for services rendered will be calculated and paid by CHABOT.

**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.

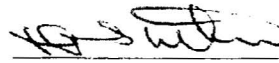
**14. Captions.** The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.

**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.

**17. IN WITNESS WHEREOF,** the Chabot-Las Positas Community College District and Contra Costa County Community College District have entered into this Agreement as of the Effective Date.

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

 9-12-12  
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David Wetmore  
Director of Purchasing  
Contra Costa  
Community College District