Memorandum of Understanding

Between
San Leandro Unified School District
and
Choose College Educational Foundation, Inc

for the term of:
October 26, 2015 – May 30, 2016

This Fiscal Sponsorship and Independent Contractor Services Agreement ("Agreement") is made by and between San Leandro Unified School District. ("Sponsor" or "SLUSD"), a public California educational institution, and Choose College Educational Foundation, Inc. ("CCEF"), a California 501c3 nonprofit corporation, in connection with implementation of academic enrichment services through the African American Regional Educational Alliances ("AAREA") for the Strategies to Empower and Prepare Students for Success Program ("STEM STEPS for Success" or "Program"). Each of Sponsor, Program and CCEF is sometimes referred to herein individually as a "Party" and together as the "Parties."

RECITALS

A. CCEF is in the business of, and has considerable expertise in, developing and implementing academic enrichment and college awareness programs. SLUSD desires to engage CCEF, and CCEF desires to be engaged, to provide academic intervention services, to the extent and on the terms and conditions set forth herein.

B. SLUSD and CCEF acknowledge that CCEF will provide a math and science enrichment program for 5-9th grade African American students and their families from November 2015 – May 2016 through the STEM STEPS for Success membership program's Saturday Academy.

NOW, THEREFORE, the Parties hereby agree as follows:

AGREEMENT

1. Term of Agreement. The term of this Agreement shall commence as of October 26, 2015 ("Effective Date"), and continue until May 30, 2016 ("Term"), unless earlier terminated as provided in **Section 10**.

2. Project Management and Responsibilities. The specific services to be provided by CCEF commencing on the Effective Date, are set forth in the attached STEM STEPS for Success Program membership brochure.

3. Compensation; Payment Terms.

(a) As compensation to CCEF for the services performed under this Agreement, SLUSD shall **(i)** pay CCEF $300 per student participant for a maximum of $20,700

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 student/family materials and monitoring activities. Indirect costs typically include expenses for general administration of the services (personnel, payroll, accounting, procurement, data processing, etc.).

(b) CCEF shall provide to SLUSD with a total of two (2) invoices; one (1) in November and one (1) in December. Specifically the invoices shall include the following information:

(i) Total number of families with confirmed program membership within the time period indicated on the invoice

(ii) A list of participating students

(iii) Any additional data required by SLUSD

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

4. Personnel; Fingerprinting.

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

(b) By execution of this Agreement, SLUSD and CCEF acknowledge that California Education Code Section 45125.1 ("Section 45125.1") applies to the outlined consulting and development. 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) CCEF expressly acknowledges and agrees that: **(i)** CCEF and all of CCEF'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)** CCEF 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)** CCEF shall certify in writing to SLUSD 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)** CCEF shall provide SLUSD a list of names of its employees who may come in contact with students. CCEF shall fulfill these requirements at its own expense.

(d) CCEF expressly acknowledges and agrees that all staff or volunteers who may come in direct contact with students participating in the Program shall meet all health

screening requirements of SLUSD. CCEF shall provide proof of health screening to the SLUSD before permitting supervision by any staff or volunteer.

5. Insurance. CCEF 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 SLUSD 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 CCEF pursuant to this Section shall be deemed primary to any potentially applicable policy or policies of insurance maintained by SLUSD 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) CCEF may obtain indemnity coverage for errors and omissions for its directors and officers and any other insurance the CCEF deems appropriate or determines is required in accordance with applicable law.

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

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

(a) CCEF hereby agrees to defend, indemnify and hold harmless SLUSD and SLUSD and its subsidiaries, affiliates, officers, directors, contractors, agents and employees (collectively, "SLUSD and SLUSD 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 CCEF or any of CCEF's subsidiaries, affiliates, officers, directors, contractors, agents and employees ("CCEF Representatives"); or **(ii)** any material breach by CCEF of any its obligations under this Agreement.

(b) SLUSD hereby agrees to defend, indemnify and hold harmless CCEF and the CCEF 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 SLUSD or any of SLUSD Representatives; or **(ii)** any material breach by SLUSD 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 SERVICES, 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, CCEF'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, CCEF 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, CCEF may utilize certain materials that are proprietary to CCEF, including without limitation CCEF's proprietary materials that comprise The Quad™. Accordingly, any rights in and to any tangible or intangible property provided by CCEF in connection with the contracted services, including The Quad™ and other intellectual property such as copyrights, trade secrets, patents and know-how previously developed or acquired by CCEF and/or developed by or on behalf of CCEF during the Term (whether in connection with the Project or otherwise) (collectively, "CCEF Materials"), shall remain and shall at all times be the property of CCEF.

8. Confidentiality. SLUSD acknowledges and agrees that the CCEF Materials (including but not limited to the materials that comprise The Quad™), as well as any other oral or written information disclosed by CCEF, that are not generally known outside of CCEF or otherwise confer on CCEF a competitive advantage, including, without limitation, information relating to CCEF's operations, finances, services, marketing plans or personnel, is confidential information of CCEF (collectively "CCEF Confidential Information"). SLUSD agrees to receive and maintain all CCEF 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 CCEF. SLUSD agrees to limit the disclosure of CCEF Confidential Information to only those employees and students of SLUSD who need the CCEF Confidential Information in connection with the implementation of the contracted services and to advise all employees of CCEF's rights in the CCEF Confidential Information. Nothing in this Agreement shall be construed as granting or conferring any rights by license or otherwise in any CCEF Confidential Information, patents, trademarks, copyrights or other intellectual property rights of CCEF except as necessary for the limited purposes of the implementation of the contracted services.

9. Termination. Prior to the expiration of the Term, SLUSD may at any time terminate this Agreement, for any reason in SLUSD's sole discretion, upon written notice to CCEF, and CCEF may at any time terminate this Agreement for any reason in CCEF's sole discretion, upon written notice to SLUSD. In the event of any such early termination, SLUSD may secure the required services from another third party or otherwise in any manner it deems appropriate, and SLUSD shall compensate CCEF 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, SLUSD promptly shall deliver or cause to be delivered to CCEF all previously undistributed copies of the CCEF Materials, together with all copies of any documents, data and materials of any sort which were furnished by CCEF to SLUSD. SLUSD shall not have the right to continue use of the CCEF 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 SLUSD: Dr. Rosanna Mucetti
San Leandro Unified School District

If to CCEF: Choose College Educational Foundation
520 3rd Street, Suite 109
Oakland, CA 94607

11. Survival. The terms of **Sections 4 and 7 though 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. CCEF is an independent contractor and is responsible for paying all CCEF'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.

SLUSD:

San Leandro Unified School District, a public California educational entity

By: _____

Printed Name:
Title:

CCEF:

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

By:

Name: Monique August
Title: Executive Director, CCEF