MEMORANDUM OF UNDERSTANDING REGARDING FACILITIES USE BY AND BETWEEN THE SAN LEANDRO EDUCATION FOUNDATION AND THE SAN LEANDRO UNIFIED SCHOOL DISTRICT

This Memorandum of Understanding Regarding Facilities Use ("MOU") is made between the San Leandro Education Foundation ("Foundation") and the San Leandro Unified School District (the "District").

WHEREAS, Foundation is an independent not-for-profit 501(c)(3) organization whose mission is to identify and mobilize local, regional and national resources in order to bring increased funding, innovative programming and strong partnerships to San Leandro Unified School District's public schools; and

WHEREAS, Foundation is in need of part-time office space and space for storage of its files; and

WHEREAS, the District has space at SLUSD Juniper Annex, 14735 Juniper Street, San Leandro, California 94579 (the "Site") that is currently not needed on a full-time basis by the District;

WHEREAS, Foundation and the District (together, "the Parties") desire to develop a mutually agreeable long-term solution that satisfies the facility needs of Foundation with respect to office and storage space; and

WHEREAS, the District believes that it is in the best interest of the District, Foundation, the students and teachers of the District, the parents of the students of the District, and the public to allow Foundation to utilize the Site pursuant to the terms of this MOU; and

WHEREAS, the parties do not intend this MOU to constitute a lease of real property pursuant to Education Code section 17455, *et seq.*

NOW, THEREFORE, the Parties, in consideration of the mutual covenants, representations, and agreements contained herein, hereby agree as follows:

Article 1. Term

1.1 The initial term of this Agreement shall be for five (5) years (beginning on July 1, 2016 and ending on June 30, 2021, the "Initial Term") subject only to termination in accordance with this MOU. The District may, at its discretion and assuming that Foundation is not in default hereunder, offer a renewal term (a "Renewal Term") for one, two, three or four years; provided that the fees for such use may change in connection with any Renewal Term.

Article 2. Use of the Site.

2.1 ALLOCATION OF SPACE.

The District hereby allocates to Foundation, for the term of this MOU, use of the Site in the manner specifically depicted in **Exhibit A**, attached hereto and incorporate herein by reference, and as set forth in this Section, and for the purposes set forth in the Foundation Charter and related uses and on the terms and conditions set forth herein.

(a) Shared Space – Shared Use. Foundation shall have shared use of the Site, solely for the purposes set forth in this MOU and in its Charter. Foundation may use the conference room and kitchen areas at the Site, however Foundation shall assume responsibility for any damage to and maintenance of the kitchen appliances and maintenance other than normal wear and tear. Shared use of the Site by Foundation may include use after school hours and on weekends, holidays, summer session, *etc.*

It is understood and agreed that persons, entities and organizations, other than Foundation, will also have access to, and use of, the Site. Foundation agrees to cooperate with such other persons, entitles and organizations with respect to such use.

(b) Foundation acknowledges and agrees that: (i) except as otherwise specifically set forth in this MOU, Foundation has not relied on any representation, statement, or warranty of the District or anyone acting for or on behalf of the District; (ii) Foundation is taking possession of, and will utilize, the Site based on its own inspection and examination thereof and on an "AS IS" basis; and (iii) the District makes no warranty or representation, express or implied, or arising by operation of law, with respect to the Site, including, but not limited to, any warranty of condition, habitability, merchantability, fitness for a particular purpose or use with respect to the premises.

2.2 SITE IMPROVEMENTS.

Foundation may not perform any work, alterations or improvements on any portion of the Site without the prior written consent of the District.

2.3 REPRESENTATIONS AND WARRANTIES OF FOUNDATION.

Foundation represents and warrants to the District that:

(a) Foundation is duly organized, validly existing and in good standing under the laws of the State of California, with full power and authority to enter into this MOU. Foundation will maintain good standing and full power and authority at all times during the term of this MOU.

(b) Foundation has full power, authority, and legal right to enter into and perform its obligations under this MOU, and the execution, delivery and performance of this MOU have been duly authorized by all necessary actions on the part of Foundation and do not require any further approvals or consents.

(c) There is no pending or, to the best knowledge of Foundation, threatened action, or proceeding before any court or administrative agency that will materially adversely affect the ability of Foundation to perform its obligations under this MOU.

Article 3. Permitted Uses

3.1 ALLOWABLE PURPOSES.

Foundation shall be entitled to use the Site solely for the purposes of operating an educational foundation and related activities as described in Foundation's Charter and this MOU.

3.2 NUISANCE, MISCELLANEOUS.

Foundation shall not do, or permit anything to be done, without the prior written consent of the District, in or about the Site nor bring or keep anything therein that will in any way increase the existing rate of or affect any fire or other insurance upon the Site or its contents, or cause cancellation of any insurance policy covering the Site or any part thereof or any of its contents, nor shall Foundation sell or permit to be kept, used, or sold in or about the Site any articles which may be prohibited by a standard form policy of fire insurance. Foundation shall not do or permit anything to be done in or about the Site that will in any way obstruct or interfere with the rights of other occupants of the Site. Foundation shall not use or allow the Site to be used for any improper or objectionable purpose, nor shall Foundation cause, maintain, or permit any nuisance in, on, or about the Site. Foundation shall not commit or suffer to be committed any waste in or upon the Site.

3.3 COMPLIANCE WITH LAWS.

Foundation shall not use the Site or permit anything to be done in or about the Site that will in any way conflict with any applicable law, statute, applicable ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Foundation shall promptly comply with all applicable laws, ordinances, regulations and governmental rules now in force or which may hereafter be in force relating to or affecting the use or occupancy of the Site. Foundation shall not be responsible for any and all legal compliance or environmental conditions that existed prior to Foundation's occupancy of the Site. Foundation shall assume responsibility for legal compliance to the extent that they are triggered by any modifications or improvement made by Foundation. Nothing in this section is intended to obligate Foundation to be responsible for or require Foundation to regulate the actions of any third parties not under the control of Foundation.

3.4 FINGERPRINTING.

Foundation shall ensure that any persons admitted by Foundation to the Site, who are likely to have significant contact with pupils, will be cleared by a background check pursuant to Section 45125.1 of the California Education Code, at Foundation's expense.

3.5 VACATING.

Upon the termination of this MOU, Foundation shall fully vacate the Site in a reasonably similar condition, minus normal wear and tear, to that which existed at the commencement of this MOU.

Article 4. Fees

4.1 Foundation will not be charged any rental fees for its use of the Site pursuant to this MOU.

Article 5. Compliance with Laws

5.1 Foundation shall not cause to occur, and shall take reasonable measures to prevent, any activity on the Site that might threaten the exterior or structural elements of the District's property.

5.2 Foundation shall neither take, nor suffer to be taken, any action that would result in the violation of (or failure to remain in compliance with) any applicable codes, regulations, and laws, including, but not limited to, the Field Act, the Americans with Disabilities Act, and any applicable local fire marshal and zoning requirements and ordinances.

Article 6. Maintenance

6.1 FURNISHING AND EQUIPMENT.

Facilities and furnishings and equipment provided to Foundation by the District shall remain the property of the District.

6.2 SITE MAINTENANCE

The ongoing operations and routine maintenance of the facilities at the Site will be the responsibility of the District during the term of this Agreement.

6.3 REQUIRED NOTICE – EMERGENCY.

Foundation shall immediately inform the District or its designees of any health and/or safety emergency affecting Foundation that may affect the safety of the Site, other schools within the District or any of the District's students, volunteers, employees or teachers. Foundation shall cooperate with, and participate in, any lockdowns or exigent security procedures required by the District.

Article 7. Indemnification

7.1 Foundation shall indemnify, hold harmless, and defend the District, its trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any

person or property occurring in, on or about the Site arising from Foundation's use of the Site or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by Foundation in or about the Site, excepting those claims, demands, actions, suits, losses, liability, expenses and costs arising out of the negligent or intentional acts of the District, its officers, employees, agents and invitees.

Foundation shall further indemnify, hold harmless, and defend the District, its trustees, officers, employees and agents against and from any and all claims arising from any breach or default in the performance of any obligation on Foundation's part to be performed under the terms of this MOU (including, without limitation, any claim against the District by a lender or provider of funds to Foundation), or arising from any act, omission or negligence of Foundation, or any officer, agent, employee, volunteer, guest, or invitee of Foundation, and from all costs, attorneys' fees, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon excepting those claims, demands, actions, suits, losses, liability, expenses and costs arising out of the negligent or intentional acts of the District, its officers, employees, agents and invitees. If any action or proceeding is brought against the District by reason of such claim (regardless of whether a claim is filed), Foundation upon notice from the District shall defend the same at Foundation's expense by counsel reasonably satisfactory to the District. Foundation shall give prompt written notice to the District's Risk Manager in case of casualty or accidents in or on the Site.

Article 8. Insurance

8.1 REQUIRED FOUNDATION INSURANCE.

During the term of this Agreement, Foundation at all times shall maintain and keep in force a minimum of One Million Dollars ($1,000,000.00) comprehensive general liability ("CGL") insurance. The maximum deductible of each CGL policy and/or coverage shall be agreed upon by Foundation and the District, and Foundation shall name the District as an additional insured entity under any such insurance policy. Foundation's liability coverage shall be primary coverage for the Site and also for liability arising from acts or omissions by Foundation, its officers, agents, employees, volunteers, guests or invitees.

8.2 COPIES.

Foundation shall provide to the District a copy of all Certificates of Insurance belonging to Foundation and that apply to Foundation and its use of the Site.

Article 9. Access by the District

9.1 The District or its agent(s) shall have the right to enter and/or pass through the Site or any part thereof at any time for any purpose including, without limitation, (a) for the purpose of making repairs in or to the Site; (b) as required by law or emergency; and (c) to examine the Site.

Article 10. Merger, Modification. Law, Notices, Invalid Provisions

10.1 ENTIRE AGREEMENT.

This MOU reflects the sole and entire facilities use agreement between the Parties. Any and all prior writings, agreements, including, without limitation, oral communications, discussions, negotiations, commitments and understandings relating thereto, are hereby merged herein and superseded hereby.

10.2 MODIFICATION.

This MOU may only be changed, amended or modified by written agreement of the Parties expressing an intent to change, amend and/or modify this MOU.

10.3 GOVERNING LAW & VENUE.

This MOU shall be governed by and construed according to the laws of the State of California. Venue shall be in Alameda County.

10.4 NOTICES.

All notices required to be given hereunder shall be in writing and served by government or commercial mail service or by facsimile. Either party may provide updated contact information under this Section by mailing a copy of said change of address/contact information to the addresses noted below.

Notice to the District shall be addressed to:
Superintendent
San Leandro Unified School District
835 E. 14th Street
San Leandro, CA 94577

Notice shall be given to Foundation at the following address:
San Leandro Education Foundation
PO Box 3820
San Leandro, CA 94578

Article 11. Assignment and Subletting

11.1 Foundation shall not assign its rights or delegate its duties under this MOU. Foundation shall not sublet or permit the subletting of the Site, or any part thereof, without written consent from the District.

Article 12. Dispute Resolution

12.1 Disputes between Foundation and the District regarding this MOU shall be resolved using the dispute resolution process described herein.

12.2 The party initiating the dispute resolution process shall prepare and send to the other party a notice of dispute that shall include the following information: (1) the name, addresses and phone numbers of designated representatives of the party; (2) a statement of the facts of the dispute, including information regarding the parties attempts to resolve the dispute; (3) the specific sections of the MOU that are in dispute; and (4) the specific resolution sought by the party. Within five business days from receipt of the notice of dispute the representatives from Foundation shall meet with representatives from the District in an informal setting to try to resolve the dispute.

12.3 If the informal meeting fails to resolve the dispute, the party initiating the dispute resolution process shall notify the other party (the responding party) in writing and the Parties shall agree on a mediator within seven business days. The nonbinding mediation procedure shall be entirely informal in nature; however, the parties may submit mediation briefs regarding the dispute at the request of the mediator. The rules of evidence will not apply and no record of the proceedings will be made. If an agreement is reached, the agreement shall be reduced to writing and shall be signed by Foundation and the District.

12.4 Either party may seek equitable or injunctive relief prior to the mediation to preserve the status quo or prevent irreparable injury pending the completion of that process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session.

Article 13. Default

13.1 DEFAULT BY FOUNDATION. The occurrence of any of the following shall constitute a material default and breach of this Agreement by Foundation:

(a) Any failure by Foundation to make payments required to be paid hereunder where such failure continues for thirty (30) days after receipt of written notice of failure to make payments by the District to Foundation.

(b) Any failure by Foundation to utilize the Site for purposes consistent with this MOU and the Foundation's Charter where such failure continues for thirty (30) days after receipt of written notice thereof by the District to Foundation.

(c) The complete abandonment or vacation of the Site by Foundation.

(d) A failure by Foundation to observe and perform any of its obligations under this MOU or comply with any applicable law or requirement, where such failure continues for thirty (30) days after receipt of written notice thereof by the District to Foundation; unless, however, the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period. Foundation shall not be deemed to be in default if Foundation shall within such thirty (30) day period commence such cure and thereafter diligently prosecute the same to completion.

Article 14. Remedies for Default and Termination for Cause

14.1 THE DISTRICT REMEDIES.

If Foundation commits any such material default and breach as defined in Article 13, then the District may, at any time thereafter without limiting the District in the exercise of any right or remedy at law or in equity which the District may have by reason or such default and breach:

(a) Maintain this MOU in full force and effect without terminating Foundation's right to possession irrespective of whether Foundation shall have abandoned the Site. In such case, the District may perform all acts it deems necessary to maintain or preserve the Site, including removal of all persons and property from the Site. If Foundation has abandoned the Site and any property not belonging to the District has been left behind, the District may consider such property as abandoned property and may dispose of it in any manner without any liability, or may, at its option, remove and store such property at the cost of and for the account of Foundation. The District may also allow others to use the space, in which case the MOU shall terminate and Foundation's and the District's respective obligations under the MOU shall be voided.

(b) Terminate Foundation's right to possession by any lawful means, in which case this MOU shall terminate and Foundation shall immediately surrender possession of the Site to the District. In such event the District shall be entitled to recover from Foundation any unpaid invoices for all costs and expenses incurred by the District in connection with the termination of Foundation's possession, including, without limitation, any and all consultant and attorney costs and fees.

Article 15. Termination for Convenience

15.1 TERMINATION BY FOUNDATION FOR CONVENIENCE.

Foundation may terminate this MOU for its convenience, by providing 30-days written notice of termination to the District.

15.2 TERMINATION BY THE DISTRICT FOR CONVENIENCE.

The District may terminate this Agreement for its convenience by providing Foundation 30-days written notice to Foundation.

SAN LEANDRO EDUCATION FOUNDATION

By: _____

Name: _____

Title: _____

Date: _____

SAN LEANDRO UNIFIED SCHOOL DISTRICT

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

ALLOCATION OF SPACE AT SITE

San Leandro Education Foundation shall be entitled to the use of two office spaces (previously occupied by Food Services/Human Resources) at the SLUSD Juniper Annex, 14735 Juniper Street, San Leandro, California 94579. Such offices spaces are located near the middle of the building. San Leandro Education Foundation shall be entitled to use of such space solely for the purposes of operating an educational foundation and related activities as described in Foundation's Charter and this MOU.