

Board Office Use: <b>Legislative File Info.</b>	
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OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

# Memo

**To** Board of Education

**From** Bernard McCune, Deputy Chief, Postsecondary Readiness

**Board Meeting Date** June 8, 2016

**Subject** **MOU WITH CALIFORNIA COLLEGE GUIDANCE INITIATIVE AND FEE-BASED SERVICE AGREEMENT WITH THE FOUNDATION FOR CALIFORNIA COMMUNITY COLLEGES/THE CALIFORNIA COLLEGE GUIDANCE INITIATIVE**

**Action Requested** **APPROVAL OF THE MOU WITH CALIFORNIA COLLEGE GUIDANCE INITIATIVE (CCGI) AND FEE-BASED SERVICE AGREEMENT WITH THE FOUNDATION FOR CALIFORNIA COMMUNITY COLLEGES/THE CALIFORNIA COLLEGE GUIDANCE INITIATIVE**

**Background and Discussion**

The CCGI Foundation is the official nonprofit organization supporting the California Community College Chancellor's Office and the California Community Colleges Board of Governors. CCGI is a campaign operated by the CCGI Foundation to ensure (a) the awareness and utilization of online planning tools in K-12 districts (b) systematic baseline guidance and support for 6<sup>th</sup>-12<sup>th</sup> grade students as they plan, prepare and finance college (c) support the continued evolution of [www.CaliforniaColleges.edu](http://www.CaliforniaColleges.edu). The Foundation will provide to the District the necessary support for the integration of education records and student data into individual student accounts on the CaliforniaColleges Website. Thereafter, student transcript data can be uploaded directly into individual student accounts and will be maintained and processed by CCGI on behalf of the District in a manner that meets the standards of the California State University and University of California systems for verified transcript data.

The Foundation will also provide 1) an audit report of District's A-G course listings in the UC Course Management Portal database to identify discrepancies; and 2) support to District on the integration of the CaliforniaColleges Website's tools and content into various instructional and counseling experiences.

## Fee Table

<u>Fee per Student*</u>	<u>Student Type</u>
\$2.00 per year	



	High School Student (grades 9-12)
\$1.50 per year	Middle School Student (grades 6-8)

\*Calculation of the total number of students and total fee due for District will be based on the California Basic Educational Data System ("CBEDS") census data available on the Effective Date of this Agreement, and will be updated on an annual basis thereafter.

The 2016-2017 total fee for District is: \$23,352; the term of the Agreement is July 1, 2016 to June 30, 2017.

Recommendation

**APPROVAL OF THE MOU WITH CALIFORNIA COLLEGE GUIDANCE INITIATIVE AND FEE-BASED SERVICE AGREEMENT WITH THE FOUNDATION FOR CALIFORNIA COMMUNITY COLLEGES/THE CALIFORNIA COLLEGE GUIDANCE INITIATIVE**

Fiscal Impact

Not to exceed an additional \$24,000 for 2016-17

Attachments

- Agreement



**CONTRACT JUSTIFICATION FORM**  
**This Form Shall Be Submitted to the Board Office**  
**With *Every* Consent Agenda Contract.**

**Legislative File ID No.** 16-1360

**Department:** Chief of Schools

**Vendor Name:** California College Guidance Initiative (CCGI)

**Contract Term:** Start Date: July 1, 2016 End Date: June 30, 2017

**Annual Cost:** \$ 24,000.00

**Approved by:** Deputy Chief of Schools

**Is Vendor a local Oakland business?** Yes ☐ No ☒

**Why was this Vendor selected?**

Tool that enables student data to be uploaded into California Colleges.

**Summarize the services this Vendor will be providing.**

1. The vendor will upload student records for colleges.
2. The vendor will audit District A-G courses.
3. The vendor will integrate District instruction and counseling with State of California system (colleges).

**Was this contract competitively bid?** Yes ☐ No ☒

If No, answer the following:

- 1) How did you determine the price is competitive?

Per student fee.

2) Please check the competitive bid exception relied upon:

- ☐ **Educational Materials**
- ☒ **Special Services** contracts for financial, economic, accounting, legal or administrative services
- ☐ **CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- ☒ **Professional Service Agreements** of less than \$87,800 (increases a small amount on January 1 of each year)
- ☐ **Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- ☐ **Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- ☐ **Emergency** contracts [requires Board resolution declaring an emergency]
- ☐ **Technology** contracts
  - ☐ electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$87,800 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
  - ☐ contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
  - ☐ Western States Contracting Alliance Contracts (WSCA)
  - ☐ California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- ☐ **Piggyback" Contracts** with other governmental entities
- ☐ **Perishable Food**
- ☐ **Sole Source**
- ☐ **Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- ☐ **Other, please provide specific exception**





**Memorandum of Agreement  
California College Guidance Initiative**

*Agreement No. CG-109-16*

This Memorandum of Agreement ("Agreement") is entered into and shall be effective as of July 1, 2016, ("Effective Date"), by and between the Foundation for Community Colleges, a nonprofit 501(c)(3) organization ("Foundation") which operates the California College Guidance Initiative ("CCGI") project as a fiscal sponsor and Oakland Unified School District ("District"). For the purposes of this Agreement the "Party" shall mean either Foundation or District and "Parties" shall mean both Foundation and District. For the avoidance of doubt, CCGI is not a designated corporate entity and is not a party to this Agreement.

**RECITALS**

WHEREAS, Foundation is the official nonprofit organization supporting the California Community College Chancellor's Office and the California Community Colleges Board of Governors and its mission to benefit, support and enhance the California Community College system;

WHEREAS, CCGI is a campaign ("CCGI Program") operated by Foundation in order to ensure (a) the awareness and utilization of online planning tools in K-12 districts (b) systematic baseline guidance and support for 6<sup>th</sup>-12<sup>th</sup> grade students as they plan, prepare and finance college (c) the continued evolution of [www.CaliforniaColleges.edu](http://www.CaliforniaColleges.edu) or hereinafter ("CaliforniaColleges Website");

WHEREAS, the purpose of this Agreement is to set forth the roles and responsibilities of the Parties related to District's uploading of Education Records to the CaliforniaColleges Website and Foundation's provision of account support services on the CaliforniaColleges Website;

WHEREAS, Foundation has entered into a third party licensing and services agreement with XAP Corporation ("XAP") for the express purposes of the design, development, implementation, operation and maintenance of the CaliforniaColleges Website to carry out the purpose of this Agreement; and

WHEREAS, Foundation and District desire and agree to enter into this Agreement in furtherance of the purpose stated above;

**AGREEMENT**

NOW, THEREFORE in consideration of the foregoing recitals (which are incorporated into and made part of this Agreement by this reference); each Party's respective representations, warranties and covenants contained herein; and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Foundation and District do hereby agree as follows:

## **1. General Terms.**

- 1.1 Captions and Interpretation. Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. Paragraph headings shall not be deemed to define, limit or extend the scope or intent of the paragraphs to which they appertain.

## **2. Definitions**

The following capitalized terms when used in this Agreement shall have the meanings ascribed to them respectively, in this Definitions section, unless such term is otherwise expressly defined in this Agreement.

- 2.1 "Agreement" shall have the meaning set forth in the preamble above and includes all exhibits, schedules and other attachments hereto, as each may be amended in a writing signed by both Parties from time to time.
- 2.2 "Authorized Third Party" shall mean a person or entity, identified on Exhibit A to this agreement, attached hereto and incorporated by reference, authorized by the District to utilize the Services in accordance with this Agreement.
- 2.3 "Business Day" shall mean a Monday, Tuesday, Wednesday, Thursday or Friday, but excluding (i) any day on which national banks having banking offices in either Sacramento or Los Angeles, California are authorized by law to remain closed and (ii) those days, not to exceed eleven (11) in any calendar year, which Foundation and/or District treats as a holidays but would otherwise be Business Days.
- 2.4 "Confidential Information" shall mean any and all information, data, Software (as defined in Section 2.15), know-how and intellectual property of a confidential or proprietary nature, including but not limited to, information, data, Software, know-how and intellectual property relating to (a) technical, scientific, developmental, marketing, manufacturing, sales, operating, performance and cost matters, (b) processes, (c) designs and (d) techniques, in any and all forms in which the foregoing may appear including, but not limited to, all record-bearing media containing or disclosing any of the foregoing. Confidential Information shall include, but not be limited to, all information, data, Software, know-how, and intellectual property that is (a) marked as "confidential" or "proprietary" at the time it is provided by or on behalf of the Party providing it, (b) expressly stated by or on behalf of the Party providing it to the Party receiving it at the time of disclosure to be considered confidential or proprietary, or (c) would under the circumstances be recognized by someone generally experienced in business affairs to be confidential or proprietary.
- 2.5 "CCGI Program" shall have the meaning set forth in the Recitals above.
- 2.6 "CaliforniaColleges Website" shall mean the Internet website located at [www.CaliforniaColleges.edu](http://www.CaliforniaColleges.edu) and owned by the Riverside County Superintendent of Schools as fiscal agent of public funds for the Foundation. The Foundation is responsible for directly contracting and compensating XAP for the continued operation and maintenance of [www.CaliforniaColleges.edu](http://www.CaliforniaColleges.edu) under a separate agreement. This definition shall also include any successor website thereto including any such site established on some other form of interactive digital or electronic communications offered over or via

any alternative or successor broad band or narrow band network or method of broadcast including wireless, intranets, extranets and interactive television or cable.

- 2.7 “Database” shall mean the combined list CCGI/XAP Electronic Transcript Technical Specifications attached to this Agreement as Exhibit C.
- 2.8 “Data Breach” shall mean actual evidence of the loss or unauthorized access to or unauthorized use of Student Data (as defined below in Section 2.13) uploaded to the CaliforniaColleges Website.
- 2.9 “Education Record” shall have the meaning as set forth in 34 CFR §99.3 or under applicable state law. Education records are those records that directly relate to a student and are maintained by an education agency or institution or by a party acting for the agency or institution. The term Education Records shall not include records that are otherwise excluded under 34 CFR §99.3 or applicable state laws.
- 2.10 “Effective Date” shall have the meaning set forth in the preamble above.
- 2.11 “Eligible Student” shall mean a student who has reached 18 years of age or is attending an institution of postsecondary education.
- 2.12 “Misuse” shall have the meaning as set forth in Section 7 of this Agreement.
- 2.13 “Student Data” shall mean any personally identifiable information (a) contained in a student's Education Record maintained by or for the District and provided to the CaliforniaColleges Website by an employee or agent of the District; or (b) acquired directly from a student or parent or legal guardian of the student by the CaliforniaColleges Website if that site is assigned to the student by a teacher or other employee of the District and shall include, by way of example, demographic information, course enrollment, performance and completion data, standardized test scores and enrollment and graduation dates.
- 2.14 “Services” means the services and levels of support offered by Foundation and accepted by District, as agreed to in a separate fee-based service agreement entered into by the Parties. A description of the Services is attached hereto as Exhibit B, and is hereby incorporated by reference.
- 2.15 “Software” shall mean the computer programs, in machine-readable object code and source code, created and owned by XAP and licensed by Foundation in order to develop, operate and maintain the CaliforniaColleges Website and to facilitate the acquisition, retention, and retrieval of System User data via the Internet. “Software” shall include, but not be limited to, computer programs, in machine-readable object code and source code, created and owned by XAP and licensed by Foundation for use in connection with the CaliforniaColleges Website, or that comprises the CaliforniaColleges Website.
- 2.16 “Personally identifiable information” shall have the meaning specified in FERPA regulations, 34 CFR §99.3.
- 2.17 “System User” shall mean any student or parent whose Student Data are disclosed to the CaliforniaColleges Website by the District or by a student (or parent) who is assigned to use the CaliforniaColleges Website by the District.



Any other capitalized terms used in this Agreement that are not defined in this Section 2 or in any exhibit, schedule or other attachment that is expressly incorporated into this Agreement, shall have the meaning given to them in this Agreement.

### **3. Term, Termination**

- 3.1 Term. The term of this Agreement shall begin on the Effective Date and shall continue until terminated by either Party ("Term") in accordance with this Section 3.
- 3.2 Termination for Convenience. The Parties shall have the right to terminate this Agreement for any reason or no reason, without penalty, at any time by providing the other with written notice of termination in accordance with Section 20 of this Agreement at least thirty (30) calendar days in advance.
- 3.3 Termination for Cause. Either party shall have the right to terminate the Agreement immediately upon written notice to the other Party upon the occurrence of a material breach of this Agreement, including a material breach with respect to the any representations and warranties which remain uncured for more than sixty (60) days after the non-breaching Party provides notice of such material breach to the other Party.
- 3.4 Effect of Expiration or Early Termination. In the event of an early termination under Section 3.2 or 3.3, access to the CaliforniaColleges Website and participation in the CCGI Program shall immediately terminate ("Termination Date"). District acknowledges and agrees that Foundation may upon the Termination Date disable District's and System Users's access to the CaliforniaColleges Website.
- 3.4.1 Deletion of Student Data. Student Data provided under the Agreement shall be destroyed by Foundation upon termination of this agreement or within thirty (30) days from the date on which the District requests destruction of the data or determines that such student data are no longer needed for the purposes of this Agreement, subject to section 3.4.3. Except as provided in section 3.4.3, the Foundation agrees to use reasonable commercial efforts to certify within thirty days (30) after the Termination Date that Student Data are no longer retained or accessible to the Foundation or Authorized Third Parties.
- 3.4.2 Requests for Return of Student Data to District. In lieu of destruction of the Student Data, as provided in sec. 3.4.1, the District may request return of the data. In the event of such a request, the District shall provide thirty days (30) advance written notice to the address listed in Section 20 of this Agreement to the Foundation. Upon request and notice by District in accordance with this Section 3.4.2, Foundation shall provide assistance with the migration and conversion of historical data in a flat file or other format reasonably requested by District and reasonably acceptable to Foundation and XAP. District shall be responsible for all costs and expenses associated with such requests including but not limited to costs for migration and data conversion and shall otherwise cooperate with Foundation and XAP to transfer such data to the District.
- 3.4.3 Retention of Student Data by the System User after Termination. The Parties acknowledge and agree that the requirements provided in Section 3.4.1 shall not apply to Student Data if the student or the student's parent supplied such Student



Data to CaliforniaColleges Website and elects upon termination of the Agreement to continue to maintain a personal account with Foundation: (1) for the purpose of storing their individual data; (2) in the event the student or parent elects to retain their data in the CCGI Program for purposes of continuing to obtain the benefits of participation in the CCGI Program; or (3) if the student or parent elects to continue to obtain the service offerings from any other Authorized Third Party with which the supplying System User has elected to share their Student Data through the CCGI Program for the educational purposes set forth under the Agreement.

#### **4. Responsibilities of Foundation**

##### **4.1 Account Support Services.**

- 4.1.1 Foundation shall provide the necessary support for the integration of Education Records and Student Data into individual student accounts on the CaliforniaColleges Website. Foundation agrees to cooperate with representatives from the District to ensure data is properly uploaded in CCGI's file format and in accordance with the requirements and instructions as more fully set forth and incorporated herein as Exhibit C to this Agreement.
- 4.1.2 Foundation shall permit access to Authorized Third Parties such as participating institutions of higher education to request and receive Student Data where the individual student already has applied for admission to the particular institution.
- 4.1.3 Foundation will enable System User's transcript data, to be uploaded directly into individual student accounts by Districts and will be maintained and processed by CCGI on behalf of the District in a manner that meets the standards of the California State University and University of California systems for verified transcript data.
- 4.1.4 Foundation will provide an audit report of District's A-G course listings in the UC Course Management Portal database to identify discrepancies. Foundation agrees to provide support to District staff for purposes of reconciliation of any identified discrepancies.
- 4.1.5 Foundation agrees to provide support to District on the integration of the CaliforniaColleges Website's tools and content into various instructional and counseling experiences.
- 4.1.6 Foundation shall provide District an ability to generate System User accounts on the "Professional Center" counselor facing portal linked to the CaliforniaColleges Website for all System Users who participate in counseling or have any other reasonable need to access student data and reporting functionality.
- 4.1.7 Foundation shall provide District an ability to select a function that allows the auto-generation of accounts for System Users to submit Student Data to CCGI.
- 4.1.8 Foundation agrees to provide support to System Users consistent with applicable law in use of the CaliforniaColleges Website including but not limited to technical advice and guidance in order to enable the System Users and Authorized Third

Parties to use the Student Data for recruitment, admissions and first year academic placement from high school to college and for any other use permissible under the terms of this Agreement.

- 4.1.9 Foundation agrees to support efforts between System Users and Authorized Third Parties by training and supporting those Authorized Third Parties in those districts and by adding them as optional "sites" to which System Users' individual portfolios can be connected for support in college planning and preparation.
- 4.1.10 Upon request by District and in accordance with the applicable legal requirements set forth under this Agreement, Foundation shall provide Student Data to institutions of higher education or financial or scholarship providers for System Users who have applied for admission to such institution or for financial aid to such provider, or as otherwise permitted by the written consent of the student's parent or guardian (or an Eligible Student as provided in Section 5.1 of this Agreement for the purposes of admissions, academic placement, and education guidance, advising, and planning.

## **5. Responsibilities of District**

- 5.1 District shall provide Foundation with a list of all approved Authorized Third Parties including but not limited to any non-profit organizations that provide student support services, youth development and college planning or preparation services under a service and data-sharing agreement with the District.
- 5.2 District shall make staff, appropriate technology resources and space available for ongoing professional development and user support.
- 5.3 District shall upload course location and course catalog files to enable the use of A-G progress analysis tools.
- 5.4 District agrees to verify accuracy of Student Data entered by District into the UC Course Management Portal at the University of California Office of the President.
- 5.5 District agrees to upload Education Records from the local SIS system into the CaliforniaColleges Website using a standard data format with naming conventions, and using a pre-defined protocol, and as follows:
  - 5.5.1 Review all data specifications with Foundation team for Phase 1 data files (upload of school code, creation of student portfolios and counselor accounts).
  - 5.5.2 Prepare and post Phase 1 data files to an FTP site.
  - 5.5.3 Make any necessary fixes to Phase 1 data files to meet upload requirements.
  - 5.5.4 Conduct final review of testing on beta site to ensure accuracy of Phase 1 upload.
  - 5.5.5 Review all data specifications with CCGI team for Phase 2 data files (enrolled/completed courses).
  - 5.5.6 Prepare and post Phase 2 data files to an FTP site.
  - 5.5.7 Make any necessary fixes to Phase 2 data files to meet upload requirements.
  - 5.5.8 Conduct final review of testing of beta site to ensure accuracy of Phase 2 upload.

- 5.6 District agrees to collaborate with Foundation staff to provide both individual user experience and technical feedback in order to improve implementation for all System Users.
- 5.7 District agrees to designate a responsible individual; (1) to assist the Foundation during implementation phase including providing any necessary support to XAP; (2) to navigate or immediately report any issues regarding availability of the CaliforniaColleges Website; and (3) to immediately report any issues regarding availability of the CaliforniaColleges Website.
- 5.8 District agrees to upload Education Records from the local SIS system into the CaliforniaColleges Website on a monthly basis. District may conduct these uploads more frequently if desired, however at least one upload per month is required.

## **6. Privacy and Data Security Compliance Obligations of the Parties**

- 6.1 Foundation agrees to maintain policies and procedures for the designation and training of responsible staff members to ensure the confidentiality and security of Student Data.
- 6.2 Foundation shall not sell or use or permit any third party to use Student Data for commercial purposes or for targeted advertising.
- 6.3 Foundation agrees to maintain commercially reasonable policies and procedures to ensure Student Data are secured in the Database.
- 6.4 Foundation shall require any Authorized Third Parties that may be granted access to Student Data to agree to terms not less restrictive than those set forth under this Section 6. Authorized Third Parties shall designate and train individuals authorized to review or receive Student Data from the CaliforniaColleges Website in order to ensure the security and confidentiality of the Student Data. Compliance with this requirement shall not, in itself, absolve the Authorized Third Party of liability in the event of an unauthorized disclosure of Student Data.
- 6.5 Foundation agrees to comply with the Children's Online Privacy Protection Act of 1998, 15 U.S.C. Sec. 6501-6506 ("COPPA") and consistent with the privacy policy located on the CaliforniaColleges Website, agrees that no Student Data shall be collected from persons under the age of thirteen unless provided by District in accordance with purposes as set forth under this Agreement.
- 6.6 Foundation shall maintain Student Data for and on behalf of District – in accordance with the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a)(4)(A)(ii), 1232g(b)(1) and Section 49073.1 of the California Education Code. Student Data may be disclosed only to the Authorized Third Parties as set forth on Exhibit A, and only to Foundation employees or employees of contractors who have a legitimate education interest in maintaining, organizing, or analyzing the Student Data for uses authorized in this Agreement.
- 6.7 Foundation shall provide Student Data only: (1) to officials or employees of the District who have a legitimate interest in the Student Data in order to assist System Users to prepare for college; (2) to contractors of the District and their employees who have a parallel interest in the Student Data; (3) to colleges to which a System User has applied for admission; (4) to appropriate financial aid organizations to which a System User has applied for aid in connection with certain determinations concerning the eligibility and conditions for an award



of financial aid to the System User; (5) in aggregate, non-personally identifiable form, to Foundation contractors for research and evaluation purposes; and (6) to other Authorized Third Parties with which the District has contracted for services – or which under California law has authority for oversight or providing services to the District (such as a County Office of Education) for purposes consistent with this Agreement. District shall ensure that any Authorized Third Party under the Agreement shall not use any Student Data obtained from the CaliforniaColleges Website for any purpose other than those required or permitted by this Agreement. District shall ensure that any third party service provider shall not use any Student Data obtained from the CaliforniaColleges Website for any purpose other than providing the service contracted for with the District or Foundation and may not disclose the Student Data to subsequent third parties.

6.8 The Foundation agrees to maintain an incident response program for purposes of memorializing Foundation's obligations under applicable law in the event Foundation detects any loss due to a Data Breach, or unauthorized access or use of Education Records or Student Data. Upon confirmation of a Data Breach, Foundation will notify District in accordance with its obligations under applicable law.

6.9 District is responsible for any notices to parents as may be required under applicable law and for providing the parent(s), guardian(s) or student(s) with an opportunity to inspect and challenge the contents of the Student Data in question. The Foundation shall cooperate with the District in providing such notices and opportunities to review and challenge the content of the Student Data.

6.10 District shall be responsible for secure transmission of Education Records from District to XAP via a secure FTP. District acknowledges and agrees that District is responsible for coordinating directly with XAP during the implementation of the Software to ensure the availability of the secure FTP site to District in accordance with this Section 6.10.

6.11 District agrees to cooperate fully with Foundation to ensure Foundation can comply with any notification obligations Foundation may have to System Users or any other parties for which notification by Foundation may be required under applicable law.

7. **Misuse of CaliforniaColleges Website.** District acknowledges and agrees that this Section 7 shall set forth the certain acts which shall either singularly or collectively constitute ("Misuse") under this Agreement. The Parties agree that the below Sections 7.1 through 7.8 shall not be construed to limit Foundation with respect to a determination of any other acts which may constitute Misuse under this Agreement and which may not otherwise be included in this Section 7 in Foundation's sole discretion. District agrees that it shall not, nor allow any System Users under the direct control of District to engage in any of the acts as set forth below:

7.1 Access or use CaliforniaColleges Website in breach of the terms of this Agreement;

7.2 Access or use CaliforniaColleges Website in violation of applicable federal, foreign, international, provincial, state and local laws, rules and regulations or any applicable privacy or data protection laws, rules, regulations or directives;

7.3 Access or use CaliforniaColleges Website for any unauthorized, fraudulent or malicious purpose;

- 7.4 Access or use CaliforniaColleges Website in a manner that could damage, disable, overburden or impair the CaliforniaColleges Website so as to diminish or destroy Foundation or XAP's ability to provide CaliforniaColleges Website to System Users;
- 7.5 Share, obtain or use, or attempt to share, obtain or use, CaliforniaColleges Website related access codes or passwords;
- 7.6 Engage in any act that would cause Foundation or XAP's failure in maintaining the integrity of CaliforniaColleges Website;
- 7.7 Engage in any use of CaliforniaColleges Website or engage in any acts which could substantially interfere with or substantially degrade the website and impact System Users;
- 7.8 Violate the CaliforniaColleges Website Terms of Use, or violate the terms of use for any Foundation or Authorized Third Party applications hosted by or accessible within CaliforniaColleges Website for utilization by System Users.

## **8. Data Rights of the Parties**

- 8.1 Foundation acknowledges and agrees that Education Records provided by the District continue to be the property of and under the control of the District.
- 8.2 The Parties shall (i) comply with all data protection legislation applicable to Student Data; (ii) encrypt all Student Data in transmission; (iv) password protect Student Data when it resides on server; and (v) ensure that all personnel having access to Student Data have been instructed regarding the confidentiality, security, and use requirements with respect to such data.
- 8.3 Except as set forth in this Agreement, Foundation is prohibited from using or transmitting to a third party any Student Data. Without limiting the foregoing, to the extent Foundation shall be required to permit access to XAP for the purposes of carrying out the terms of this Agreement, such access shall not be deemed to be a violation of this Section 8.3.
- 8.4 Foundation agrees to ensure XAP maintains certain functionality on the CaliforniaColleges Website to allow System Users to update, modify, or delete any of the Student Data provide to Foundation by the District or System User through to the CaliforniaColleges Website.
- 8.5 Foundation may only use the Student Data entered into the CaliforniaColleges Website (i) as needed to perform its obligations under this Agreement, (ii) in accordance with the relevant directions provided by the System User in order to facilitate the utilization of functionality offered by the CaliforniaColleges Website or to which the System User can link directly from the CaliforniaColleges Website or which the System User can access directly utilizing the user name and password assigned to the System User in connection with the CaliforniaColleges Website (such links to be subject to Foundation's prior approval), or (iii) in aggregate, non-personally identifiable form, specifically for research and evaluation activities.
- 8.6 Foundation may not initiate or permit any Authorized Third Parties to make commercial contacts with System Users or make other commercial use of the CaliforniaColleges Website or Education Records or Student Data collected on the CaliforniaColleges Website.

- 8.7 District is responsible for communicating to Foundation such updates, modifications or deletions to Student Data as may be requested or otherwise necessary. If Foundation receives a request either in writing or orally from a System User challenging the content of Student Data maintained by Foundation, Foundation shall contact the District to validate the identity of the System User and request instructions regarding any corrective action that needs to be taken, if any. Once validated, District shall upload corrected Student Data as part of a comprehensive replacement file.
- 8.8 Upon termination of the Agreement, District shall use commercially reasonable efforts to notify System Users enrolled in the District that they may at System User's election create a new account for purposes of continuing to access their Student Data on the CaliforniaColleges Website after the Termination Date.
- 8.9 The Parties agree to cooperate with XAP to ensure that the original uploaded Student Data provided by a System User enrolled in the District will be merged into the newly created System User account. District shall coordinate with XAP to ensure that all Education Records are deleted from the System User's account and that all Student Data is otherwise retained and merged into a newly created System User account.
- 8.10 System Users may at their own election provide Student Data to Authorized Third Parties for the express purposes of obtaining the various service offerings of such Authorized Third Parties for educational purposes and in accordance with the requirements of this Agreement.

## **9. Indemnification Obligations of the Parties in the Event of A Data Breach**

### **9.1 Foundation**

- 9.1.1 Foundation's indemnification obligations under this Section 9 of this Agreement shall continue in full force and effect during the Term of this Agreement.
- 9.1.2 Foundation shall, at its own expense, indemnify, defend, and hold harmless District from any expense, cost, claim, loss, or liability (collectively, "Loss") resulting from any Data Breach provided that:
- 9.1.2.i the Loss arises solely from Foundation's loss or unauthorized access or use of Student Data and does not arise as the result of: (1) any Misuse by District as defined in Section 7 of this Agreement; (2) any action or inaction by District or any officer, director, employee, affiliate, contractor, or subcontractor of District, (3) any action or inaction by an Authorized Third Party or System User.
- 9.1.3 District shall promptly (and in no event more than ten (10) calendar days after District receives notice of a potential or actual Loss notifies Foundation of such Loss that may give rise to an obligation of Foundation under this Section 9.1.
- 9.1.4 Foundation promptly takes reasonable actions, if any, to mitigate the harm caused as a result of the data loss or disclosure.

### **9.2 District**



- 9.2.1 District's indemnification obligations under this Section 9 of this Agreement shall continue in full force and effect during the Term of this Agreement
- 9.2.2 District shall, at its own expense, indemnify, defend, and hold harmless Foundation from any expense, cost, claim, loss, or liability (collectively, "Loss") resulting from any Data Breach provided that: the Loss arises solely from District's Misuse of the CaliforniaColleges Website or System or any action or inaction by District or any officer, director, employee, affiliate, contractor, or subcontractor of District including any Authorized Third Party.

## **10. Mutual Indemnification**

- 10.1 Each Party to this Agreement ("Indemnitor") agrees to indemnify, defend and hold harmless the other, and its directors, trustees, officers, employees, agents (collectively "Indemnitees") against any and all liability, claims, demands, suits, losses, costs, legal fees including reasonable attorneys' fees, personal injury or illness and/or death, resulting from, arising out of, or connected with (a) Indemnitor's performance or omissions related to same under this Agreement, except as otherwise provided in Section 9 above; (b) any breach by Indemnitor of this Agreement.
- 10.2 The Indemnitee must approve the extension of all settlement offers proposed by the Indemnitor and Indemnitee's approval shall not be unreasonably withheld. The Indemnitor shall furnish Indemnitees with all related evidence in its control.
- 10.3 Nothing in this Agreement shall constitute a waiver of limitation of any rights which Indemnitees may have under applicable law.

## **11. Confidential Information**

- 11.1 District and Foundation each agrees that (i) it shall receive and use the Confidential Information it receives (in such capacity a "Recipient") in connection with this Agreement from the other Party (in such capacity a "Discloser") solely for the purposes contemplated by this Agreement, (ii) it shall not use any such Confidential Information for any other purpose, and (iii) it shall receive and hold such Confidential Information in trust and confidence for the benefit of the Discloser. All Confidential Information provided in connection with this Agreement:
  - 11.1.1 Shall not be distributed, disclosed, or disseminated in any way or form by the Recipient to anyone except those of its own employees and professional advisors who have a reasonable need to know said Confidential Information for the purpose or purposes described above, who are informed of the confidential and proprietary nature of the Confidential Information, and who have agreed in a writing in favor of the Recipient to protect the confidentiality of the Confidential Information with terms at least as restrictive as those in this Section 11;
  - 11.1.2 Shall be treated by the Recipient with at least the same degree of care utilized by Recipient to protect its own confidential and proprietary information of a similar nature, but in no event with less than reasonable care;

- 11.1.3 Shall not be used by the Recipient for its own purposes, except as otherwise expressly provided in this Agreement; and
- 11.1.4 Shall remain the property of and be returned to the Discloser or, at the Discloser's election, destroyed (along with all copies or other embodiments thereof) immediately upon the termination or expiration of this Agreement for any reason and by either Party.
- 11.2 The obligations of a Recipient pursuant to this Section 11 hereof shall not apply, however, to any Confidential Information which (i) at the time it is delivered to the Recipient hereunder is already in the public domain or subsequent to such delivery comes into the public domain in a manner that does not involve a breach of this Agreement by the Recipient or its employees or advisors; (ii) at the time it is delivered to the Recipient hereunder is already in the Recipient's possession free of any obligation of confidentiality; (iii) is received independently by the Recipient from a third Party who is entitled to disclose such information to the Recipient; (iv) is subsequently independently developed by the Recipient without use of or benefit from or reference to the Confidential Information of Discloser.
- 11.3 Notwithstanding anything to the contrary herein, the Recipient may disclose Confidential Information if required to be disclosed by a court or regulatory or other governmental agency of competent jurisdiction, provided that in connection with any such requirement the Recipient shall (A) if legally permitted, promptly notify the Discloser of such requirement in writing, (B) cooperate with the Discloser, at the Discloser's request and expense, to obtain a protective order or other confidential treatment or to contest such required disclosure, (C) shall afford the Discloser all available opportunities to obtain a protective order or other confidential treatment or challenge such required disclosure, including the opportunity to challenge it in the name and with the standing of the Recipient, (D) shall comply with any protective order or other confidential treatment obtained by the Discloser, and (E) shall disclose only the minimum amount of information that the Recipient is required to disclose.

## **12. Representation, Warranties and Covenants of the Parties**

- 12.1 Exchange of Information. The Parties represent and warrant that all information that each Party presently knows or reasonably should recognize to be materially relevant to the other Party's understanding of their obligations under the Agreement has been provided to that Party.
- 12.2 Compliance with Laws. The Parties agree to comply with all applicable national, state, and local laws and regulations in the performance of their obligations under the Agreement, including but not limited to the observance of all applicable laws and regulations related to the privacy and security of the Student Data provided by any System User.
- 12.3 Relationship of the Parties. Foundation is acting as an independent non-profit organization to facilitate the Services under this Agreement for the purposes as set forth in the Recitals. Foundation is neither an employee, subcontractor, nor an agent of District. Foundation shall have no right or authority to enter into agreements on behalf of or otherwise bind, District, and District shall have no right to enter into agreements or otherwise bind Foundation.



- 12.4 Due Authorization. Each of the Parties represents and warrants that (i) it has all requisite power, authority, and capacity to enter this Agreement and to perform its obligations herein; (ii) the execution and delivery of this Agreement by such Party and the consummation of the transactions contemplated herein by such Party have been duly and validly authorized by all necessary action, including all approvals and consents required from any other person or governmental authority; and (iii) this Agreement constitutes a valid, legally binding Agreement of such Party, enforceable against such Party in accordance with its terms.
- 12.5 Other Instruments. Each of the Parties hereto represents and warrants that the execution, delivery, and performance of this Agreement by such Party, its compliance with the terms hereof, and the consummation by it of the transactions contemplated herein will not violate, conflict with, result in a breach of or constitute a default under its certificate of incorporation or other charter instrument, by-laws, or any instrument or agreement to which it is a Party or by which it is bound, any state or federal law, rule or regulation, or any judicial or administrative decree, order, ruling or regulation applicable to it.
- 12.6 Covenant of Further Assistance. In the event that at any time after the date hereof any further action is necessary or desirable to carry out the purposes of this Agreement, each Party will cooperate with the other Party and take such further action for such purposes (including the execution and delivery of such further instruments and documents) as the other party reasonably may request and to which the recipient of the request has no reasonable objection

### **13. Disclaimer of Warranties.**

FOUNDATION MAKES NO WARRANTIES RELATED TO THE SERVICES PROVIDED BY FOUNDATION OR XAP HEREUNDER, AND HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. DISTRICT ASSUMES TOTAL RESPONSIBILITY FOR ITS USE OF THE RESULTS OBTAINED FROM THE SERVICES. FOUNDATION DOES NOT WARRANT THAT THE SERVICES MEET DISTRICT'S REQUIREMENTS OR WILL BE UNINTERRUPTED OR ERROR FREE.

### **14. Limitations of Liability.**

IN NO EVENT WILL FOUNDATION (INCLUDING ITS SUBSIDIARIES, ITS PARENT AND SUBSIDIARIES OF ITS PARENT, ITS SERVICE PROVIDERS AND LICENSORS, AND THE EMPLOYEES, OFFICERS, DIRECTORS AND AGENTS THEREOF) BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES UNDER THIS AGREEMENT OR IN CONNECTION WITH ANY SERVICES PROVIDED BY FOUNDATION HEREUNDER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR DISTRICT'S MISUSE OF THE CALIFORNIA COLLEGES WEBSITE, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICES, DATA OR ANY OUTPUT, EVEN IF FOUNDATION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF AVAILABLE REMEDIES ARE FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THE TOTAL LIABILITY, IF ANY, OF FOUNDATION (INCLUDING ITS SUBSIDIARIES, ITS PARENT AND SUBSIDIARIES OF ITS PARENT, ITS SERVICE



PROVIDERS AND LICENSORS, AND THE EMPLOYEES, OFFICERS, DIRECTORS AND AGENTS THEREOF) IN THE AGGREGATE OVER THE TERM OF THIS AGREEMENT FOR ALL CLAIMS, CAUSES OF ACTION OR LIABILITY WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE ARISING UNDER OR IN ANY WAY RELATED TO THIS AGREEMENT AND/OR THE SERVICES PROVIDED HEREUNDER (COLLECTIVELY, "CLAIMS"), SHALL BE LIMITED TO THE LESSER OF: (A) DISTRICT'S DIRECT DAMAGES, ACTUALLY INCURRED, OR (B) THE TOTAL FEES PAID BY DISTRICT TO FOUNDATION IN THE MOST RECENT SIX (6) MONTH PERIOD. NOTWITHSTANDING THE FOREGOING, FOUNDATION'S SOLE OBLIGATION IN THE EVENT OF AN ERROR BY FOUNDATION IN THE PERFORMANCE OF ANY SERVICES UNDER THIS AGREEMENT SHALL BE LIMITED TO REPROCESSING APPLICABLE DATA OR REPERFORMING THE SERVICES. FOUNDATION (INCLUDING ITS SUBSIDIARIES, ITS PARENT AND SUBSIDIARIES OF ITS PARENT, ITS SERVICE PROVIDERS AND LICENSORS, AND THE EMPLOYEES, OFFICERS, DIRECTORS AND AGENTS THEREOF) SHALL HAVE NO LIABILITY, EXPRESS OR IMPLIED, WHETHER ARISING UNDER CONTRACT, TORT OR OTHERWISE, FOR ANY CLAIM OR DEMAND: (A) RESULTING DIRECTLY OR INDIRECTLY FROM FOUNDATION'S INTERNAL OPERATIONS, EQUIPMENT, SYSTEMS OR SOFTWARE OWNED OR LICENSED BY FOUNDATION; OR (B) BY THIRD PARTIES, EVEN IF FOUNDATION WAS ADVISED OF THE POSSIBILITY OF SUCH CLAIMS OR DEMANDS, EXCEPT AS EXPRESSLY PROVIDED OTHERWISE HEREIN. DISTRICT ACKNOWLEDGES THAT FOUNDATION HAS SET ITS FEES, IF ANY, AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH IN THIS AGREEMENT, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

## **15. Insurance.**

15.1 District. At District's sole cost and expense, District will obtain, keep in force, and maintain insurance as listed below. Coverages required will not limit any liability of District and will include: commercial general liability insurance with a combined single limit of no less than one million dollars (\$1,000,000.00) per occurrence and automobile liability insurance for all owned, scheduled, or hired automobiles with a combined single limit of no less than one million dollars (\$1,000,000.00) per accident; and workers' compensation as required under the Workers' Compensation and Safety Act of the State of California, as amended from time to time. The Commercial General Liability Policy shall name Foundation for California Community Colleges, its directors, officers, and employees as Additional Insureds. District, upon the execution of this Agreement, shall cause their insurance carrier(s) to furnish Foundation with a properly executed Certificate(s) of Insurance and endorsements effecting coverage as required herein. All insurance required to be carried by District and/or Indemnitor shall be primary, and not contributory, to any insurance carried by Foundation.

15.2 Foundation. At Foundation's sole cost and expense, Foundation will obtain, keep in force, and maintain insurance as listed below. Coverage required will not limit any liability of Foundation and will include: commercial general liability insurance with a combined single limit of no less than one million dollars (\$1,000,000.00) per occurrence and automobile liability insurance for all owned, scheduled, or hired automobiles with a combined single limit of no less than one million dollars (\$1,000,000.00) per accident; and workers' compensation as required under the Workers' Compensation and Safety Act of the State of California, as amended from time to time. Foundation, upon the execution of this Agreement, shall cause their insurance carrier(s) to furnish District with a properly executed Certificate(s) of

Insurance and endorsements effecting coverage as required herein. All insurance required to be carried by Foundation and/or Indemnitor shall be primary, and not contributory, to any insurance carried by District.

- 16. Mutual Audit Rights of the Parties.** The Parties shall be entitled to upon reasonable notice to the other party an opportunity to conduct compliance audits under 20 U.S.C. Section 1232g. The Parties shall negotiate the scope, length and terms of such audits in good faith between each Party's representatives.
- 17. Independent Status.** Foundation is an independent non-profit entity, in business for itself, which shall perform the specific tasks relative to providing technical support and related Services to fulfill the terms of this Agreement. Foundation does not have the authority to incur any obligation, contractual or otherwise, in the name or on behalf of District.
- 18. Waiver.** No verbal or implied waiver of any breach of any provisions of this Agreement will constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions in this Agreement. Any waiver by either party must be in writing and delivered to the other party.
- 19. Governing Law.** This Agreement shall be construed in accordance with the laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of California.
- 20. Notice.** Any request, notice or other communication by either Party shall be given in writing and shall be deemed given when actually delivered, one (1) Business Day after it is entrusted to a courier service of national reputation promising overnight delivery service, or three (3) Business Days after deposited in the United States Mail for delivery by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows:

**CCGI:**

All Programmatic Issues  
Tessa Carmen De Roy, Ed.D.  
Executive Director  
Phone: 323-999-7161  
[tderoy@californiacolleges.org](mailto:tderoy@californiacolleges.org)

Contract Issues, including Contract Notices:  
Contracts Department  
Foundation for California Community Colleges  
Fax: 916-325-0844  
[contracts@foundationccc.org](mailto:contracts@foundationccc.org)

**DISTRICT:**

Jacqueline Minor  
Co-General Counsel  
510-879-8535  
[Jacqueline.minor@ousd.org](mailto:Jacqueline.minor@ousd.org)

- 21. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which together shall constitute one and the same instrument. If this Agreement is executed in counterparts, no signatory hereto shall be bound until both the parties have fully executed a counterpart of this Agreement.
- 22. Entire Agreement.** This Agreement constitutes the entire, complete, final and exclusive agreement between the parties with respect to the subject matter hereof and supersedes and replaces any and



all prior and contemporaneous communications between Foundation and District regarding such subject matter.

- 23. Construction of Agreement.** Both parties have participated in the negotiation and drafting of this Agreement. Therefore, the terms and conditions of this Agreement shall not be construed against either party as the drafting party.
- 24. Authority to Bind.** The parties each represent and warrant that the signatories below are authorized to sign this Agreement on behalf of themselves or the party on whose behalf they execute this Agreement. Authorized signatories of Foundation are Foundation corporate officers, two (2) of whom must sign this Agreement, any amendment or modification thereto, for it to be authorized and valid.
- 25. Survival.** Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 of this Agreement shall survive Termination of the Agreement.
- 26. Severability.** If any part of this Agreement is found invalid or unenforceable, that part will be amended to achieve as nearly as possible, the same economic effect as the original provision and the remainder of this Agreement will remain in full force and effect.

[Signature Page to Follow]



THE PARTIES HEREBY EXECUTE THIS AGREEMENT.

**DISTRICT**

By: [Signature]  
Print Name: James Harris  
Title: President, Board of Education  
Date: 6-8-16

**DISTRICT (if second signature required)**

By: [Signature]  
Print Name: Antwan Wilson  
Title: Secretary, Board of Education  
Date: 6-8-16

File ID Number: 16-1360  
Introduction Date: 6-8-16  
Enactment Number: 16-0865  
Enactment Date: 6-8-16

[Signature]  
OAKLAND UNIFIED SCHOOL DISTRICT  
Office of General Counsel  
APPROVED FOR FORM & SUBSTANCE

**FOUNDATION**

By: [Signature]  
Print Name: Joseph Quintana  
Title: Chief Operating Officer  
Date: 7/18/16

**FOUNDATION**

By: [Signature]  
Print Name: John O'Sullivan  
Title: VP of Finance & CFO  
Date: 7/18/16

**CCGI**

By: [Signature]  
Print Name: Tessa DeRay  
Title: ED, CCGI  
Date: 7/5/14



## **Exhibit A**

### **CaliforniaColleges Website List of Authorized Third Parties**

The individuals and/or entities listed below are authorized by the District to utilize the Services in accordance with this Agreement:

- ...
- ...



## **Exhibit B**

### **CaliforniaColleges Website Foundation Services**

Services provided by Foundation generally include products, services, and levels of support agreed to by District under a separate fee-based service agreement, and are summarized in the CCGI District Partnerships matrix ("District Partnership Matrix"), attached hereto and incorporated by reference. For purposes of the District Partnership Matrix, the following definitions apply:

"Partner Districts" are Districts that have current and valid agreements with Foundation for data sharing and fee-based services associated with the CaliforniaColleges Website; and

"Nor-Partner Districts" are Districts that do not have current and valid agreements with Foundation for data sharing and fee-based services associated with the CaliforniaColleges Website.





CALIFORNIA COLLEGE  
GUIDANCE INITIATIVE

## CCGI District Partnerships

What is the difference between Partner districts and non-partner districts?

California College Guidance Initiative Tools & Resources	Non-Partner Districts	Partner Districts
<b>California College Guidance Initiative Tools &amp; Resources</b>		
- Lesson Plans and Modules	X	X
- Student accounts created manually	X	
- Ability to auto-generate Student accounts districtwide w/common naming convention (e.g. [district acronym]+local studentID) from a Data File		X
- Provision of Professional Center accounts for Educators	X	X
- Automatically connect Student accounts to their schools and Educator's Professional Center accounts		X
- Ongoing professional development for counselors and other educators		X
<b>UC/CSU</b>		
- UC Doorways database audit & assistance with clean-up		X
- Verified transcript data populates Plan of Study		X
• Improved submission of grades to CSU Mentor (courses and grades locked)		X
• Course information considered "Verified" for purposes of application; faster application processing (faster financial aid processing, etc.)		X
- Transcript evaluation for easier analysis of UC/CSU eligibility (phasing in the tools beginning Fall 2015) integrated into four year high school Plan of Study		X
- Student accounts automatically added and released from schools after every CCGI data file upload		X
- Counselors/Administrators automatically added and released from schools after every Pro Center data file upload		X
- All Academic Tracking Reports Use Transcript Data from Data File		X
<b>Strategy &amp; Consultation &amp; Professional Development</b>		
- Consultation on career and college planning strategies 6-12 <sup>th</sup> grade		X
- Support for the Integration of CC.edu, mobile app, and other resources into counseling and/or relevant course curriculum		X
- Customized, ongoing user support for district personnel and local partners		X

CCGI invests significant resources in each of our district partnerships. Our goal is to ensure successful usage of our tools to advance your college and career readiness goals for your students. Our application process is designed to help both the district and CCGI determine whether or not a successful partnership can be established.



### **Exhibit C**

Exhibit C is included for purposes of more fully describing the Database and the Database elements utilized by XAP and Foundation for the creation of accounts at [www.californiacolleges.edu](http://www.californiacolleges.edu) and to provide transparency with respect to the population of the System Users' plans of study with enrolled and completed courses.

The tables outlined in Exhibit C describe the data elements within each uploaded data file received from the District and lists the data element name, maximum field length, a short description, valid field content.

Exhibit C is available online at:

<http://ccgi.force.com/solution/apex/solutiondetail?id=501i00000004rU4AAI>



## **FEE-BASED SERVICE AGREEMENT**

**between**

**THE FOUNDATION FOR CALIFORNIA COMMUNITY COLLEGES/  
THE CALIFORNIA COLLEGE GUIDANCE INITIATIVE**

**and**

**OAKLAND UNIFIED SCHOOL DISTRICT**

*Agreement No. CG-110-16*

This Fee-Based Service Agreement ("Agreement"), is entered into and shall be effective as July 1, 2016, ("Effective Date") by and between the Foundation for Community Colleges, a nonprofit 501(c)(3) organization ("Foundation") which operates the California Guidance Initiative ("CCGI") project as a fiscal sponsor and Oakland Unified School District ("District"). "Party" means either Foundation or District and "Parties" means both Foundation and District. For the avoidance of doubt, CCGI is not a designated corporate entity and is not a party to this Agreement.

### **1. BACKGROUND AND PURPOSE**

Foundation is the official nonprofit organization supporting the California Community College Chancellor's Office and the California Community Colleges Board of Governors and its mission is to benefit, support and enhance the California Community College system.

CCGI is a campaign ("CCGI Program") operated by Foundation in order to ensure (a) the awareness and utilization of online planning tools in K-12 districts (b) systematic baseline guidance and support for 6<sup>th</sup>-12<sup>th</sup> grade students as they plan, prepare and finance college (c) the continued evolution of [www.CaliforniaColleges.edu](http://www.CaliforniaColleges.edu) or herein after (the "CaliforniaColleges Website");

The purpose of this Agreement is to set forth, in detail, Foundation's provision of enhanced services on the CaliforniaColleges Website in exchange for a fee paid by District;

### **2. DEFINITIONS**

- a. "Malicious Code" means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.



- b. "Services" means the enhanced services and levels of support offered by Foundation under this Agreement or on the CaliforniaColleges Website that are not already provided free of charge, including any associated offline components, which generally includes the following:

i. Data Services.

- 1) An ongoing audit (upon each upload) of the discrepancies between District's local course listings and District's listings in the University of California Course Management Portal (CMP), and
- 2) A-G progress analyses, both individual student reports and aggregate tracking and reporting capability for counselors.
- 3) Ability for students to auto-populate applications for admission to all CSU campuses with course data from their individual account on CaliforniaColleges.edu, when such data matches to the CMP.

ii. Implementation Support.

Dedicated staffing to support:

- 1) Definition of grade level college and career planning goals;
- 2) Identification of associated tools, activities and lesson plans that will allow students to achieve those goals;
- 3) Site level plans for how those activities and lessons will be rolled out at each campus;
- 4) Intensive support to the adults who will mediate those experiences for students (teachers, counselors, career techs etc.); and
- 5) Support in looking at the data associated with our joint work to ensure that we are helping the District to meet its annual targets and ensure progress towards its overarching goals.

- iii. Technical and Service Level Support. The CaliforniaColleges Website is operated and maintained by XAP, a third-party vendor. All technical and service level support is provided directly by XAP. Districts should reach out to their CCGI regional contact person in order to facilitate communication with XAP regarding technical issues with CaliforniaColleges Website.

- iv. Additional information is provided as Exhibit A ("CCGI District Partnerships"), attached hereto and incorporated by reference. Exhibit A delineates which Services are available to District (referred to in Exhibit A as a "Partner District") via this Agreement, which is above and beyond the open access resources and basic services available to school districts and students statewide (referred to in Exhibit A as "Non-Partner Districts") free of charge.

- c. "Student Data" shall mean any personally identifiable information (a) contained in a student's Education Record maintained by or for the District and provided to the CaliforniaColleges Website by an employee or agent of the District pursuant to a data sharing agreement entered into by the Parties; or (b) acquired directly from a student or parent or legal guardian of the student by the CaliforniaColleges Website if that site is assigned to the student by a teacher or other employee of the District and shall include, by way of example, demographic information, course enrollment, performance and completion data, standardized test scores and enrollment and graduation dates.

- d. "System User" shall mean any student or parent whose Student Data are disclosed to the CaliforniaColleges Website by the District or by a student (or parent) who is assigned to use the CaliforniaColleges Website by the District.
- e. "Terms of Use" means the terms and conditions and privacy policy for System Users set forth on the CaliforniaColleges Website, which may be updated from time to time and are hereby incorporated by reference.

### **3. SERVICE-RELATED REQUIREMENTS**

- a. District's Responsibilities. District will (1) be responsible for System Users' compliance with this Agreement, (2) use reasonable efforts to prevent unauthorized access to or use of Services, and notify Foundation promptly of any such unauthorized access or use, (3) use Services only in accordance with the Terms of Use and applicable laws and government regulations.
- b. Unauthorized Access or Use. District will not (1) make any Service available to, or use any Service for the benefit of, anyone other than District or System Users, (2) sell, resell, license, sublicense, distribute, rent or lease any Service, (3) use a Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (4) use a Service to store or transmit Malicious Code, (5) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (6) attempt to gain unauthorized access to any Service or its related systems or networks, (7) copy a Service or any part, feature, function or user interface thereof, (8) frame or mirror any part of any Service, other than framing on District's own intranets or otherwise for District's own internal business purposes or as permitted in this Agreement, (9) access any Service in order to build a competitive product or service, or (10) reverse engineer any Service (to the extent such restriction is permitted by law).

### **4. TERM AND TERMINATION**

- a. Term of Agreement. This Agreement commences on the Effective Date and continues for a period of one year.
- b. Termination. A party may terminate this Agreement for cause (1) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (2) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Either Party shall have the right to terminate this Agreement for any reason or no reason, without penalty, at any time by providing the other Party with written notice of termination at least 30 days in advance.
- c. Refund or Payment upon Termination. If this Agreement is terminated by District in accordance with Section 4b (Termination), Foundation will refund District any prepaid fees covering the remainder of the term. If this Agreement is terminated by Foundation in accordance with Section 4b, District will pay any unpaid fees covering the remainder of the term. In no event will termination relieve District of District's obligation to pay any fees payable to Foundation for the period prior to the effective date of termination.
- d. Surviving Provisions. The Sections titled "Fees and Payment for Services," "Proprietary Rights and Licenses," "Confidentiality," "Disclaimer of Warranties," "Mutual



Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Notices," and "General Provisions" will survive any termination or expiration if this Agreement.

## 5. FEES AND PAYMENT FOR SERVICES

- a. Fees. The fee structure is attached as Exhibit B ("Fee Schedule"), and is hereby incorporated by reference. District will pay all fees specified in Exhibit B. Payment obligations are non-cancelable, fees paid are non-refundable, and fees cannot be decreased during the relevant subscription term, they are assessed on an annual basis.
- b. Invoicing and Payment. Foundation will provide District with an invoice for services incurred under this Agreement on an annual basis. Unless otherwise stated, invoiced charges are due net 30 days from the invoice date. District are responsible for providing complete and accurate billing and contact information to Foundation and notifying Foundation of any changes to such information. Documentation should be sent via email to [accountspayable@foundationccc.org](mailto:accountspayable@foundationccc.org) or to the following address:  
  
California College Guidance Initiative  
c/o: Foundation for California Community Colleges  
1102 Q Street, Suite 4800  
Sacramento, CA 95811
- c. Overdue Charges. If any invoiced amount is not received by Foundation by the due date, then without limiting Foundation's rights or remedies, those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.
- d. Suspension of Service and Acceleration. If any amount owing by District under this or any other agreement for Services is 30 or more days overdue, Foundation may, without limiting Foundation's other rights and remedies, accelerate District's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Foundation's services to District and Users until such amounts are paid in full. Foundation will give District at least 10 days' prior notice that District's account is overdue, in accordance with Section 11 (Notices), before suspending services to District.
- e. Payment Disputes. Foundation will not exercise Foundation's rights under Section 5c (Overdue Charges) or 5d (Suspension of Service and Acceleration) above if District is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.
- f. Taxes. Foundation's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). District are responsible for paying all Taxes associated with District's purchases hereunder. If Foundation has the legal obligation to pay or collect Taxes for which District is responsible under this Section 5, Foundation will invoice District and District will pay that amount unless District provides Foundation with a valid tax exemption certificate authorized by the appropriate taxing authority.



- g. Future Functionality. District agree that District's purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Foundation regarding future functionality or features.

## 6. PROPRIETARY RIGHTS AND LICENSES

- a. Reservation of Rights. Subject to the limited rights expressly granted hereunder, Foundation reserves all of its rights, title and interest in and to the Services, including all of Foundation's related intellectual property rights. No rights are granted to District hereunder other than as expressly set forth herein.
- b. License by District to Use Feedback. District grant to Foundation a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction or other feedback provided by District or Users relating to the operation of the Services.

## 7. CONFIDENTIALITY

- a. Definition of Confidential Information. "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. District's Confidential Information includes District's Data; Foundation's Confidential Information includes the Services; and Confidential Information of each party includes the terms and conditions of this Agreement (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (1) qualifies as data governed by a separate agreement between the Foundation and a District, school, or a System User individually, (2) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (3) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (4) is received from a third party without breach of any obligation owed to the Disclosing Party, or (5) was independently developed by the Receiving Party.
- b. Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (1) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (2) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any Authorization Form to any third party other than its legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this Section 5.

- c. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## **8. DISCLAIMER OF WARRANTIES**

FOUNDATION MAKES NO WARRANTIES RELATED TO THE SERVICES PROVIDED BY FOUNDATION HEREUNDER, AND HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. DISTRICT ASSUMES TOTAL RESPONSIBILITY FOR ITS USE OF THE RESULTS OBTAINED FROM THE SERVICES. FOUNDATION DOES NOT WARRANT THAT THE SERVICES MEET DISTRICT'S REQUIREMENTS OR WILL BE UNINTERRUPTED OR ERROR FREE.

## **9. MUTUAL INDEMNIFICATION**

- a. Each Party to this Agreement ("Indemnitor") agrees to indemnify, defend and hold harmless the other, and its directors, trustees, officers, employees, agents (collectively "Indemnitees") against any and all liability, claims, demands, suits, losses, costs, legal fees including reasonable attorneys' fees, personal injury or illness and/or death, resulting from, arising out of, or connected with (a) Indemnitor's performance or omissions related to same under this Agreement, except as otherwise provided; (b) any breach by Indemnitor of this Agreement.
- b. The Indemnitee must approve the extension of all settlement offers proposed by the Indemnitor and Indemnitee's approval shall not be unreasonably withheld. The Indemnitor shall furnish Indemnitees with all related evidence in its control.
- c. Nothing in this Agreement shall constitute a waiver of limitation of any rights which Indemnitees may have under applicable law.

## **10. LIMITATION OF LIABILITY**

- a. Limitation of Liability. NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY DISTRICT HEREUNDER IN THE 6 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY DISTRICT HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT DISTRICT'S PAYMENT OBLIGATIONS UNDER SECTION 5 (FEES AND PAYMENT FOR PURCHASED SERVICES).



- b. Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

11. **NOTICES:** All notices and other communications required or permitted to be given under this Agreement, including but not limited to any notice of change of address, must be directed to the following individuals:

Foundation/CCGI Primary Contact:

Tessa Carmen De Roy, Ed.D.  
Executive Director, California College Guidance Initiative  
c/o Foundation for California Community Colleges  
1102 Q Street, Suite 4800  
Sacramento, CA 95811  
Phone: (323) 999-7161  
[tderoy@californiacolleges.org](mailto:tderoy@californiacolleges.org)

Foundation Contracts Contact

(Contracts Issues Only, including but not limited to Contract Notices):

Contracts Department  
Foundation for California Community Colleges  
1102 Q Street, Suite 4800  
Sacramento, CA 95811  
Fax: (916) 325-0844  
[contracts@foundationccc.org](mailto:contracts@foundationccc.org)

District Primary Contact:

Jacqueline Minor  
Co- General Counsel  
1000 Broadway, Suite 600  
Oakland, CA 94607  
Phone: 510-879-8535  
Fax: 510-879-4046  
[Jacqueline.minor@ousd.org](mailto:Jacqueline.minor@ousd.org)

All notices shall be in writing and shall be emailed, personally delivered, certified mail, postage prepaid and return receipt requested, or by overnight courier service. Notice shall be deemed effective on the date emailed, personally delivered, or if mailed, 5 days after deposit of the same in the custody of the United States Postal Service or overnight courier service.

## 12. GENERAL TERMS

- a. Captions and Interpretation. Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. Paragraph headings shall not be deemed to define, limit or extend the scope or intent of the paragraphs to which they appertain.



- b. Assignment and Delegation. This Agreement may not be assigned or otherwise transferred by either party without the prior written consent of the other party; however, either party will have the right to assign its rights and obligations under this Agreement in connection with a merger, acquisition, or sale transfer of substantially all of its assets. Any assignment by District not in accordance with this paragraph will be void, at the option of Foundation.
- c. Entire Agreement. This Agreement constitutes the entire, complete, final and exclusive agreement between the parties with respect to the subject matter hereof and supersedes and replaces any and all prior and contemporaneous communications between Foundation and District regarding such subject matter. Any terms and conditions which are additional to or different from the terms and conditions of this Agreement, including any Authorization Forms and Terms of Use which are incorporated by reference, are hereby deemed rejected by Foundation and shall not be of any effect or in any way binding upon Foundation.
- d. Modification of Agreement. This Agreement may be modified only by a written agreement dated subsequent to the effective date and signed by authorized representatives of each party. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.
- e. Law to Govern; Venue. This Agreement shall be interpreted, governed and construed in accordance with the internal substantive laws of the State of California. Any dispute or claim arising from this Agreement shall be resolved in a state or federal court in Sacramento, California. The parties specifically submit to the personal jurisdiction and subject matter jurisdiction of the state and federal courts located in Sacramento, California.
- f. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement.
- g. Construction of Agreement. Both parties have participated in the negotiation and drafting of this Agreement. Therefore, the terms and conditions of this Agreement shall not be construed against either party as the drafting party.
- h. Execution of this Agreement. The Parties agree that this Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which together shall constitute one and the same instrument, and that a photocopy or facsimile may serve as an original. If this Agreement is executed in counterparts, no signatory hereto shall be bound until both the parties have fully executed a counterpart of this Agreement.
- i. Authority to Bind. The parties each represent and warrant that the signatories below are authorized to sign this Agreement on behalf of themselves or the party on whose behalf they execute this Agreement.
- j. Severability. If any part of this Agreement is found invalid or unenforceable, that part will be amended to achieve as nearly as possible, the same economic effect as the original provision and the remainder of this Agreement will remain in full force and effect.
- k. Non-waiver. The failure of either Foundation or District, whether purposeful or otherwise, to exercise in any instance any right, power or privilege (including but not limited to waiver) under this Agreement or under law of this Agreement shall not constitute a waiver of any other right, power or privilege, nor of the same right, power or privilege in any other instance. Any waiver by Foundation must be in writing.

1. **Force Majeure.** Foundation shall not be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of Services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, terrorism, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of Foundation.

THE PARTIES HEREBY EXECUTE THIS AGREEMENT.

**DISTRICT**

By: [Signature]  
Print Name: James Harris  
President, Board of Education

Title: \_\_\_\_\_

Date: 6-8-16

**DISTRICT** (if second signature required)

By: [Signature]  
Print Name: Antwan Wilson  
Secretary, Board of Education

Title: \_\_\_\_\_

Date: 6-8-16

**FOUNDATION**

By: [Signature]  
Print Name: Joseph Quintana

Title: Chief Operating Officer

Date: 7/18/16

**CCGI**

By: [Signature]  
Print Name: Tessa DeRay

Title: ED CCGI

Date: 7/15/16

[Signature]  
**OAKLAND UNIFIED SCHOOL DISTRICT**  
Office of General Counsel  
APPROVED FOR FORM & SUBSTANCE

File ID Number: 16-1360  
Introduction Date: 6-8-16  
Enactment Number: 16-0865  
Enactment Date: 6-8-16  
By: \_\_\_\_\_



**EXHIBIT A**





CALIFORNIA COLLEGE  
GUIDANCE INITIATIVE

## CCGI District Partnerships

What is the difference between Partner districts and non-partner districts?

California College Guidance Initiative Tools & Resources	Non-Partner Districts	Partner Districts
<b>California College Links &amp; (for Professionals) Center</b>		
- Lesson Plans and Modules	X	X
- Student accounts created manually	X	
- Ability to auto-generate Student accounts districtwide w/common naming convention (e.g. [district acronym]+local studentID) from a Data File		X
- Provision of Professional Center accounts for Educators	X	X
- Automatically connect Student accounts to their schools and Educator's Professional Center accounts		X
- Ongoing professional development for counselors and other educators		X
<b>Day 2</b>		
- UC Doorways database audit & assistance with clean-up		X
- Verified transcript data populates Plan of Study		X
• Improved submission of grades to CSU Mentor (courses and grades locked)		X
• Course information considered "Verified" for purposes of application; faster application processing (faster financial aid processing, etc.)		X
- Transcript evaluation for easier analysis of UC/CSU eligibility (phasing in the tools beginning Fall 2015) integrated into four year high school Plan of Study		X
- Student accounts automatically added and released from schools after every CCGI data file upload		X
- Counselors/Administrators automatically added and released from schools after every Pro Center data file upload		X
- All Academic Tracking Reports Use Transcript Data from Data File		X
<b>Strategy &amp; Consultation for Professional Development</b>		
- Consultation on career and college planning strategies 6-12 <sup>th</sup> grade		X
- Support for the integration of CC.edu, mobile app, and other resources into counseling and/or relevant course curriculum		X
- Customized, ongoing user support for district personnel and local partners		X

CCGI invests significant resources in each of our district partnerships. Our goal is to ensure successful usage of our tools to advance your college and career readiness goals for your students. Our application process is designed to help both the district and CCGI determine whether or not a successful partnership can be established.



CALIFORNIA COLLEGE  
GUIDANCE INITIATIVE

## **EXHIBIT B – FEE SCHEDULE**

### **I. Fees:**

#### **a. Fee Table.**

<b><u>Fee per Student*</u></b>	<b><u>Student Type</u></b>
\$2.00 per year	High School Student (grades 9-12)
\$1.50 per year	Middle School Student (grades 6-8)

\*Calculation of the total number of students and total fee due for District will be based on the California Basic Educational Data System ("CBEDS") census data available on the Effective Date of this Agreement, and will be updated on an annual basis thereafter.

The 2016-2017 total fee for District is: \$23,352.

- b. Re-Assessing Fees. Fees are re-assessed annually as vendor fees and other associated costs change each year.
- c. Additional Fees. An additional fee may be assessed if a District changes Student Information Systems and/or uploads data for students for whom District did not obtain consent.

### **II. Payment Instructions:**

Upon receipt of the invoice, District shall tender payment pursuant to Section 5b (Invoicing and Payment) of this Agreement.