

MASTER AGREEMENT
BY AND BETWEEN
THE SAN JOSE/EVERGREEN COMMUNITY COLLEGE DISTRICT
AND
THE SAN JOSE/EVERGREEN COMMUNITY COLLEGE DISTRICT FOUNDATION

This Agreement is made and entered into on July 1, 2016, by and between the San Jose/Evergreen Community College District, hereinafter referred to as the “District,” and the San Jose/Evergreen Community College District Foundation, hereinafter referred to as the “Corporation,” a nonprofit organization established as an auxiliary organization pursuant to Education Code section 72670(e) in accordance with all of the provisions of Education Code section 72670 et seq. and 5 CCR 59250 et seq. and operated as an integral part of the District to support San Jose City College and Evergreen Valley College, hereinafter referred to as the “Colleges.” The District and the Corporation are referred to collectively herein as the “Parties.”

This Agreement is intended to meet the requirements set forth in 5 CCR 59251(b) and 59255(e) for a written agreement between the Corporation and the District, which must be approved by the District’s Board of Trustees and the Corporation’s Board of Directors, and which must be submitted to the State Chancellor along with copiers of the Corporation’s Articles of Incorporation and Bylaws.

The is organized under California Nonprofit Public Benefit Corporation Law (Cal. Corp. Code, §§ 5110-6815) and operates exclusively for charitable and educational purpose within the meaning of Section 501(c)(3) of the Internal Revenue Code. The specific purpose of the Corporation is to advance the interests and promote the welfare of the Colleges.

CONFORMANCE WITH LAWS, REGULATIONS, POLICIES, AND PROCEDURES

1. The Corporation shall maintain its organization and operate in accordance with sections 170(b)(1)(A), 501(c)(3), and 509(a)(1) of the Internal Revenue Code of 1986, and Government Code section 12580 and shall maintain compliance with all requirements thereof at all times.
2. The Corporation shall maintain its Articles of Incorporation, Bylaws, organization, and operations in accordance with Education Code sections 72670 et seq. and 5 CCR 59250 et seq.
3. The Corporation shall operate in compliance with District Board Policy 3600 titled and District Administrative Procedure 3600, titled as “Auxiliary Organizations”.
4. Rules and procedures for the administration of auxiliary organizations may be revised as necessary by the Chancellor or designee by amendment to the District Administrative Procedure 3600. The Chancellor or designee shall notify the Corporation’s Board of Directors promptly in writing of such revisions and inform the Board of Directors of the date by which any changes in the Corporation’s procedures must be accomplished.

AUTHORIZED CORPORATION FUNCTIONS AND ACTIVITIES

5. The Corporation shall undertake administration of its functions, in support of the goals and objectives of the District and the Colleges as led by the District’s Board of Trustees and Chancellor for the purpose of involving and gaining the support of alumni and members of the community and generating revenue in support of the Colleges

6. The Corporation's activities, services, and programs shall be conducted for the general benefit of the Colleges and are limited to the functions set forth in 5 CCR 59259. The Corporation is authorized by the District to conduct the following services, programs, and functions:
 - a. solicitation and receipt of gifts, bequests, devises, endowments, and trusts for the benefit of the Colleges and Students;
 - b. scholarships;
 - c. fundraising activities for the benefit of the Colleges and Students;
 - d. alumni activities;
 - e. activities to build public support for the District and the Colleges; and
 - f. public relations programs.

The disposition of net earnings derived from the operation of the Corporation, including earnings derived from facilities owned or leased by the Corporation, shall be dedicated solely to the services, programs, and functions authorized herein and the establishment of fiscally prudent financial services.

7. The Corporation may be authorized by the District to perform additional services, programs, and functions in one or more written contracts between the Parties. The Corporation shall provide only those services, programs, and functions authorized by a written agreement with the District.
8. The Corporation shall be responsible for maintenance and payment of its operating expenses. The Corporation may expend funds in such amounts and for such purposes as approved by the Board of Directors of the Corporation with relation to unrestricted funds.
9. If the Chancellor or designee determines that any activity or appropriation planned by the Corporation is not consistent with District policy, the activity or appropriation shall not be implemented. Further should an activity or appropriation which has received approval, upon review, be determined by the Corporation's Board of Directors or the District's Board of Trustees to be an operation outside the acceptable policy of the Corporation or the District, then that activity or appropriation shall be discontinued by direction of the Chancellor or designee until further review is accomplished and an appropriate adjustment is made.
10. Fund of the Corporation shall be used for purposes consistent with District Policy and shall not be used:
 - a. to support or oppose any candidate for public office, whether partisan or not, or to support or oppose any issue before the voters of the State of California or any subdivision thereof or any city, municipality, or local governmental entity of any kind; or
 - b. to make personal loans.
11. The Corporation recognized that the District's Board of Trustees retains the right to name all District facilities and properties consistent with Board Policy 6620. The Corporation is not permitted to use the name of the District or Colleges unless approved in advance by the District's Board of Trustees.

DISTRICT SERVICES PROVIDED TO THE CORPORATION, ITS USE OF DISTRICT FACILITIES, AND ITS REIMBURSEMENT OBLIGATIONS

12. In accordance with the Civic Center Act as defined by Education Code § 82542, the Corporation may occupy, operate, and use such District facilities as are mutually identified by the Parties as appropriate and are consistent with the policies, rules, and regulations which have been or may be adopted by the District's Board of Trustees. The Corporation agrees that it will keep and maintain the described facilities in clean and orderly condition. The District shall pay for normal, reasonably anticipated maintenance costs and repairs. The District reserves the right to charge

the Corporation for costs related to excessive use or beyond normal wear and tear of District facilities utilized by the Corporation.

13. The District may charge the Corporation for the use and occupancy of District facilities to be used by the Corporation in connection with the performance of its functions. The District agrees to provide the Corporation with the use of office space for \$4,000 per annum payable August 1st for each year this Agreement is in effect. The District shall provide the Corporation with at least 90 days written notice prior to the end of any fiscal year if the District decides to change the annual fee.
14. The right to use any of the district facilities shall cease upon written notice by the Chancellor that the facilities are needed for the exclusive use of the District or Colleges. Any pro-rated fee will be returned to the Corporation by the District within 30 days from the date of the written notice.
15. The District and its agents shall have the right to enter District Facilities utilized or occupied by the Corporation or any part thereof for the purpose of examination or supervision.
16. The Corporation shall provide full reimbursement to the District for the cost of services performed by the District's employees under the direction of the Corporation including, but not limited to, the salary and benefits of Corporation support staff employed by the District. The Corporation shall reimburse the District for that portion of the employee's actual costs spent in providing said services. Notwithstanding the foregoing requirement for full reimbursement, up to 50% of the reimbursement by the Corporation may be made in the form of non-monetary benefits that the Corporation provides to the District, such as increased community awareness or other such benefits that are agreed upon by the Parties. Such non-monetary benefits shall be assigned a good-faith reimbursement value by the District. The District and Corporation shall mutually determine at least annually and in all cases in advance of the performance of such services the cost and/or the method for determining the amount to be reimbursed by the Corporation for such services. The District shall not provide District employee services to the Corporation unless the services to be provided and the Corporation's reimbursement obligations have been agreed upon in writing in advance.

ACCOUNTING AND REPORTING

17. The fiscal year of the Corporation shall coincide with that of the District. The Corporation shall utilize an accounting system in accordance with generally accepted accounting principles. The Corporation will provide quarterly financial reports to the District and shall adhere to the District's financial standards in order to assure the fiscal viability of the Corporation. Such standards shall include proper provision for professional management; adequate working capital; adequate reserve funds for on-going operations, capital replacements, contingencies; and adequate provisions for new business requirements.
18. The District shall provide auditing services through the District's Independent Auditor to the Corporation; however, the cost of said services shall be that of the Corporation. The audit shall be performed by a certified public accountant in accordance with auditing standards generally accepted in the United States of America. The audit shall be a public record, except as otherwise provided by law. Financial activities of the Corporation shall be administered and reported in accordance with prudent business practices and generally accepted accounting principles.
19. The Corporation may hold and invest endowments and funds functioning as endowments on a long-term basis. Such instruments must be consistent with the terms of the gift instrument. Investment operation shall be conducted in accordance with prudent sound practices to ensure

that gift assets are protected and enhanced, and that a reasonable return is achieved, and with due regard for the fiduciary responsibilities of the Corporation's Board of Directors.

20. The Corporation may open bank accounts only for investment purposes with the approval of the Corporation's Board of Directors. The Corporation shall provide copies of all records related to such accounts to the District upon request.
21. The Corporation shall not enter into any contract or other business arrangement involving real property either by lease involving payments of more than \$25,000 per annum or with duration terms of more than one year, or by purchase without prior notification and approval by the Chancellor.
22. Income generated by the Corporation in excess of costs and provisions for equipment, maintenance, reserves, and working capital shall be used to benefit the Colleges.
23. The Corporation's Board of Directors shall establish and adopt capital provisions to ensure fulfillment by the Corporation of the terms of this Agreement.
24. The Corporation shall be maintained in accordance with District policies approved by the District's Board of Trustees and District procedures approved by the Chancellor. No funds or resources, other than funds or resources derived from gifts or bequests, shall be transferred by the District to the Corporation for the purpose of either avoiding laws or regulations which constrain community college districts or provide the District or Colleges with an unfair advantage with respect to the application of any State funding mechanism. Such State funding mechanisms include, but are not limited to, apportionment funding, capital outlay funding, and funding for programs and services for Students.
25. Trust funds under the control of the Corporation shall be used specifically for the purpose designated in the instrument creating the trust. The Corporation shall adopt a uniform procedure for recording donor intent for such gifts and shall maintain such records to ensure compliance with donor intent.

INSURANCE, BONDING, AND INDEMNITY

26. The District shall include the Corporation as a named insured under the District's insurance coverage, including self-insured programs and additional insurance policies for all of the Corporation's regular functions. When special events are sponsored by the Corporation, the District may require the Corporation to provide separate insurance coverage for the Corporation and the District protecting against liability arising from such special events. If any insurance policy is secured by the Corporation, the District shall be named as an additional insured. A copy of each policy or endorsement or insurance certificates setting forth the coverage and limits shall be provided to the District within 30 days form the receipt of the document.
27. The Corporation agrees to indemnify, defend, and hold harmless the District, its officers, agents, and employees, from any and all loss, damage, or liability that may be suffered or incurred by the District, its officers, agents, and employees caused by, arising out of, or in any way connected with the use of the described facilities by the Corporation or in connection with this Agreement.
28. Officers and employees of the Corporation may be required to be bonded as appropriate in amounts to be determined by the Corporations' Board of Directors.

BOARD OF DIRECTORS

29. The Board of Directors shall include the following ex-officio members who shall have full voting power:

- a. immediate past President of the Board of Trustees; and
 - b. President of the Board of Trustees.
- 30. The Board of Directors shall include the following ex-officio members who shall not have voting power:
 - a. Chancellor; and
 - b. Vice Chancellor, Administrative Services.
- 31. The Corporation's Board of Directors shall hold at least one public business meeting each quarter held in accordance with Chapter 9 (commencing with section 54950) of Part 1 of the Government Code.
- 32. The Corporation's Board of Directors shall undertake training at least annually to gain awareness and understanding of the prohibitions against contracts or other transactions in which a Director has a financial interest. (See Education Code §§ 72677-72680.)
- 33. Election to membership on the Corporation Board shall be upon approval of a majority of the Board of Directors and subject to the approval of the Chancellor.

COMPLIANCE REVIEW

- 34. All Corporation procedures and practices shall be reviewed to determine compliance with Education Code Sections 72670 et seq.; the policies, rules, and regulations of the Board of Governors including those set forth in 5 CCR 5952 et seq.; District Board Policy 3600; and Administrative Procedure 3600. The Chancellor shall designate the individual to conduct this review, which shall be conducted at least every three years this Agreement is in effect.
- 35. When the Chancellor's designee determines, after inspection and review, that certain Corporation procedures or practices are not in compliance, a recommendation concerning the items of noncompliance shall be communicated in writing to the Chancellor and to the Corporation's Board of Directors. The Board of Director's shall reply in writing within 60 days, either describing the actions which will be taken, including a timetable, to bring said procedures or practices into compliance; or describing the reasons why the Board considers the procedures already to be in compliance.
- 36. If the Chancellor's designee considers the proposed corrective actions to be acceptable, the Corporation shall be so informed. A second compliance review shall be held at the end of the time agreed to and the results communicated in writing to the Chancellor and to the Corporation's Board of Director's.
- 37. When the Corporation fails to provide an acceptable proposal for corrective actions or fails to implement successful corrective actions within the agreed upon time, the Chancellor shall inform the Corporation's Board of Directors of such further action as s/he considers appropriate, which may include a recommendation to the District's Board of Trustees for termination of this Agreement.

DISTRIBUTION OF ASSETS UPON DISSOLUTION, CESSATION, OR TERMINATION OF AGREEMENT

- 38. The Corporation shall dissolve, liquidate, and wind down upon cessation of operations and/or termination of this Agreement, if the term of this Agreement is not extended, or if there is no successor Agreement between the Parties. Upon cessation of operations, dissolution, liquidation, of winding down of the Corporation, the assets remaining after payment or provision for payment of all debts and liabilities of the Corporation shall be distributed to the District's Board of Trustees for the support of the Colleges. If the Corporation holds any assets in trust, the District shall assume the role of successor trustee if permitted by the documents

establishing the trust and, if not, such assets shall be disposed of in such a manner as may be directed by decree of the Superior Court of Santa Clara County, upon petition by the California Attorney General or by any person concerned of liquidation.

NON-ASSIGNABILITY

39. This Agreement is not assignable by the Corporation, either in whole or in part, nor shall the corporation permit any other party to use the described facilities or any part thereof without written consent of the Chancellor.

JURISDICTION

40. This Agreement shall be governed and construed in accordance with the laws of the State of California applicable to contracts made and fully performed therein, and the State and Federal Courts located in the Santa Clara County, California and the Northern District of California shall have exclusive jurisdiction of all suits and proceedings arising out of or in connection with this Agreement. Both Parties hereby submit to the jurisdiction of said courts for purposes of any such suit or proceeding, and waive any claim that any such forum is inconvenient.

INTEGRATED AGREEMENT

41. This Agreement represents the entire Agreement between the Parties. This Agreement may not be amended, changed, or supplemented in any way except by written Agreement signed by both Parties.

WAIVER

42. The waiver by either Party of a breach or violation of any provision of this Agreement shall not constitute a waiver or any subsequent or other breach or violation.

NOTICES

43. All notices herein required to be given, or which may be given by either Party to the other, shall be deemed to have been fully given when made in writing and received by the Corporation or the Chancellor.

Notice to the Corporation shall be addressed as follows:

Chair, Board of Directors
San Jose/Evergreen Community College District Foundation
[Address on File]

Notice to the District shall be addressed as follows:

Chancellor
San Jose/Evergreen Community College District
40 S. Market Street, 7th Floor
San Jose, CA 95113-2367

TERMS OF THE AGREEMENT

44. This Agreement is for the term of five years beginning on July 1, 2016. The term of the Agreement may be extended by mutual written agreement of the Parties. This Agreement may be terminated by either Party giving 60 days written notice prior to a fiscal year end, subject to the provisions of the Agreement governing Distribution of Assets upon Dissolution, Cessation, or Termination of the Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the signatures hereto set forth below.

San Jose/Evergreen Community College District Foundation

(Signature of Chair, Board of Director)

San Jose/Evergreen Community College District

(Signature of Chancellor)