

**MASTER AGREEMENT AMONG SOUTHWESTERN COMMUNITY COLLEGE
DISTRICT AND THE SOUTHWESTERN COLLEGE FOUNDATION**

This Agreement, made this 9th day of August, 2016, by and between the Governing Board of the Southwestern Community College District (the "College District"), and the Southwestern College Foundation (the "Foundation") (an Internal Revenue Code 501 (c)(3) nonprofit corporation), is intended to set forth policies and procedures that will contribute to the coordination of their mutual activities. Collectively, the Foundation, and the College District are referred to as the ("Parties.")

RECITALS

A. Whereas, the Foundation was organized and incorporated in 1982 for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, foundations, and others for the benefit of the College District.

B. Whereas, the Foundation is an incorporated 501(c)(3) organization and is responsible for working with potential donors and other friends of the College District; soliciting cash, securities, real and intellectual property, and other private resources for the support of the College District; and acknowledging and stewarding such gifts in accordance with donor intent and its fiduciary responsibilities.

C. Whereas, the Foundation exists to raise and manage private resources supporting the mission and priorities of the College District and provide opportunities for institutional excellence otherwise unavailable with state funds. Foundation funds are primarily used for scholarships, campus activities, community activities and to build the endowment fund.

D. Whereas, the Foundation is dedicated to assisting the College District in building endowments and in addressing, long-term academic and other priorities of the College District through financial support.

E. Whereas, the College District desires the Foundation to continue its assistance to the College District, including its identification and stewardship of donor funds and assistance in fundraising efforts directed toward expanding and enhancing the educational goals and capabilities of the College District, and further desires to make available to the Foundation support toward meeting these objectives, and will provide certain limited support to the Foundation to further both the College District's and Foundation's purposes.

F. Whereas, the College District believes that so long as the Foundation continues to adequately perform funds management and fundraising assistance to the College District, the College District's best interests are served by continuing to support the Foundation's operations by providing personnel, certain facilities, and administrative services.

G. Whereas, the Governing Board of the College District believes the services and funds provided by the Foundation to the District have a fair-market value which is assessed to be equivalent or in excess of the value of the facilities, administrative services and personnel provided by the College District to the Foundation.

H. Whereas, the Governing Board of the College District (the "Governing Board") and the board of directors of the Foundation (the "Board of Directors") previously authorized the Foundation and the College District to enter into a Master Agreement by and between Southwestern Community College District and Southwestern College Foundation (the "Prior Agreement,") dated August 10, 2000.

I. Whereas, the Parties now wish to enter into this Agreement to provide for the governance of the Foundation and the shared responsibilities of the Parties, and to specify their relative rights and obligations.

Now, therefore, the Parties hereby agree as follows:

I. FOUNDATION RESPONSIBILITIES AND RELATIONSHIP TO THE COLLEGE DISTRICT

The Foundation agrees to provide the College District the following services:

A. FUNDRAISING.

1. The Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of the College District.
2. The Foundation, in consultation with the College District's Superintendent/President, is responsible for planning and executing comprehensive fund-raising and donor-acquisition programs such as annual giving, major gifts, planned gifts, special projects, and campaigns as appropriate in support of the institution's mission.
3. The Foundation will establish, adhere to, and periodically assess its gift-management and acceptance policies. It will promptly acknowledge and issue receipts for all gifts on behalf of the Foundation and the College District and provide appropriate recognition and stewardship of such gifts.
4. The Foundation recognizes that it bears major responsibility for fund-raising.

5. The Foundation shall establish and enforce policies to protect donor confidentiality and rights.

B. STEWARDSHIP OF FUNDS

1. The Foundation will be the exclusive entity to receive and administer gifts of property, real or personal, financial or otherwise, to be used on behalf of the College District, its faculty, students and staff all according to the terms of the donor. In the event the donor does not specify the terms or all the terms for which the gift shall be used, the Foundation shall administer and use the gift for the promotion of educational services, programs and facilities at Southwestern College and/or within the Southwestern Community College District.

2. The Foundation will transfer funds to the designated entity/programs/services within the College District in compliance with applicable laws, College District policies and gift agreements.

3. The Foundation will ensure disbursements made on behalf of the College District be reasonable business expenses that support the College District, are consistent with donor intent and do not conflict with the law.

4. The Foundation will receive, hold, manage, invest and disperse contributions of cash, securities, patents, copyrights and other forms of property, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred-gift instruments.

5. The Foundation will establish asset-allocation, disbursement and spending policies that adhere to applicable federal and state laws, including the Uniform Prudent Investor Act (UPIA) and the Uniform Management of Institutional Funds Act (UMIFA).

6. The Foundation will engage an independent accounting firm annually to conduct an audit of the Foundation's financial and operational records and will provide the College District with a copy of the annual audited financial statements, including management letters.

C. FUNDING AND ADMINISTRATION

1. The Foundation will establish a financial plan to underwrite the cost of Foundation programs, operations and services not provided by the College

District.

2. The Foundation will develop policies and procedures that will allow for the assessment of reasonable and proportionate gift and transaction fees, enabling the Foundation to pay for a portion of the expenses associated with the business operations of the Foundation, as well as donor recognition.

3. The Foundation shall, by prior written agreement, invoice the College District for expenditures not covered by the Agreement indicating items charged and the method of determining costs. Each invoice shall be paid within thirty (30) days of the time it is submitted.

4. The Foundation shall reimburse the College District for services to the Foundation not covered by the Agreement within thirty (30) days of the time any invoice is submitted.

5. The Foundation will provide access to data and records to the College District on a need-to-know basis and when requested by the College District in accordance with applicable laws, Foundation policies and guidelines. The Foundation will provide copies of its annual report, and other information that may be publicly released.

6. The Foundation will continue to promote the College District's best interest, when requested, within the region, state and nation to raise the visibility and enhance the reputation of the College District.

7. The Foundation will provide grants to College District programs, organizations and associations to provide enhanced learning experiences for students in accordance with Foundation policies.

8. The Foundation will provide scholarships to the students of the College District in accordance with the awarding of those scholarships through the College District's Financial Aid Office.

9. In addition to the College District Superintendent/President and the Foundation Executive Director, the Foundation may, at the discretion of the board, permit nonvoting, advisor representatives from the College District to serve on the Foundation Board.

II. COLLEGE DISTRICT RESPONSIBILITIES AND RELATIONSHIP TO THE FOUNDATION

The College District agrees to provide the Foundation with the following services:

A. USE OF FACILITIES

1. The Foundation may occupy, operate, and use College District facilities and property separately or jointly with the College District as identified by agreements made from time to time by the College District Superintendent/President and the Board President of the Foundation.

2. Pursuant to civic Center and Other Facilities Use Policy/Procedures No; 6700, the Foundation shall use the facilities and property only for those services and functions that are consistent with the policies, rules and regulations which have been or may be adopted by the Governing Board of the College District; due to the Classification I status of the SWC Foundation, fees associated with the facility usage are designated no charge.

3. The right to use any of the College District facilities or equipment pursuant to the terms and conditions of this agreement shall terminate upon ninety (90) days written notice by the College District Superintendent/President.

4. The College District shall have the right to enter the described facilities or any part thereof for any purpose.

B. SERVICES PROVIDED BY COLLEGE DISTRICT EMPLOYEES

1. The College District will provide adequate staff support to coordinate and implement fundraising initiatives including, but not limited to, major gift solicitations in support of the Foundation. The College District recognizes that in order for the Foundation to fulfill its responsibilities under this Agreement and to properly support the College District's fundraising initiatives, the following critical positions are necessary: one (1) FTE Executive Director of the Foundation, one (1) FTE Development Specialist and one (1) FTE Fund Specialist. The staffing levels will be reviewed annually by both parties and may be reasonably adjusted accordingly in consultation with the Foundation based on budget availability and funding.

2. The District will provide resources to the Foundation from time to time, in consultation with the Foundation, for the purposes of creating, pursuing and

implementing initiatives deemed fit for the Foundation to manage in support of the College District programs.

3. The Superintendent/President of the College District will recommend to the Board of Trustees, with the consultation of the Foundation Board, a person to serve as executive director, of the Southwestern College Foundation.

4. The College District will consider the recommendations of the Executive Director regarding staffing requirements of the Foundation and to allow for the hiring of personnel through the district's normal processes and procedures as determined necessary.

5. The College District will assign, at the College District's discretion, additional District personnel to assist the Foundation to support its operations.

C. PROVISION OF SERVICES

1. The College District will provide certain services, at no cost, to the Foundation, which may include custodial and facilities maintenance services, equipment and information systems service and advice, personnel and related assistance and other similar services as from time to time agreed upon in writing.

2. The College District shall, by prior written agreement, invoice the Foundation for expenditures not covered by the Agreement indicating items charged and the method of determining costs. Each invoice shall be paid within thirty (30) days of the time it is submitted.

3. The College District shall reimburse the Foundation for services to the College District not covered by the Agreement within thirty (30) days of the time any invoice is submitted.

4. The College District will assist with marketing services, as is necessary, for the Foundation to accomplish its goals. Such assistance to include:

(1) Foundation Name, Seal and Logotype. Consistent with its mission to help to advance plans and objectives of the College District, the Foundation is granted the use of the name, "Southwestern College Foundation," however, the Foundation will operate under its own seal and logotype and shall not use the College District seal or other identifying marks in the promotion of its business and activities without the prior

approval of the College District to do so.

(2) Authorization to use the College District name and marketing brand in conformance with the College District's branding guidelines.

(3) Coordination, collaboration and facilitation of the Southwestern College Foundation website.

5. The College District will provide the Foundation information technology support including software, hardware, and functional support necessary to carry out its mission.

6. The College District will provide strategic support and recommendations to the Foundation on the promotion and allocation of donor investment.

7. The College District will provide an accurate and fair process for the selection and awarding of scholarships, in conformance to the criteria established by scholarship donors.

8. The College District will communicate institutional priorities and long-term plans, as approved by the Board of Trustees and the College District's administrative leadership to the Foundation, and to include the Executive Director of the Foundation as an active participant in collegial governance and the campus community.

9. The College District will allow the Superintendent/President to assume an appropriate role in the strategic aspects of fundraising activities, such as donor cultivation and community engagement.

10. The College District's Superintendent/President will work in conjunction with the leadership of the Foundation and Executive Director to identify, cultivate and solicit prospects for private gifts.

11. The College District will honor the terms, conditions, or limitations imposed by donor or legal determination on any gifts transferred from the Foundation.

III. TERMS OF AGREEMENT

A. Disposition of earnings: Net income generated by the Foundation shall be used solely to benefit the College District. Provisions for the acceptance, management and investment of gifts shall be established by the Board of Directors of the Foundation to ensure the good stewardship and fiduciary responsibilities of the Foundation for endowments and other gifts.

B. The Agreement will be reviewed by the Foundation and the College District from time to time as reasonably determined by the Foundation and the College District.

C. Alignment of Interest with the College District: So long as this agreement is in force and effect:

1. The Board of Directors of the Foundation shall include the College District Superintendent/President and the Foundation Executive Director as non-voting, advisory members.

2. The College District Superintendent/President shall have the right to cause the Foundation to cease any activity deemed, in his or her judgment, to be contrary to the interests of the College District or inconsistent with the policies or purposes of the College District.

D. To ensure effective achievement of the items of this Agreement, the College District and Foundation officers and board representatives may hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.

E. Any party may, upon 90 days prior written notice to the other, terminate this Agreement. Notwithstanding the foregoing, either party may terminate this Agreement in the event another Party defaults in the performance of its obligations and fails to cure the default within 90 days after receiving written show cause notice.

F. Should the College District choose to terminate this Agreement, the Foundation may require the College District to pay, within 180 days of written notice, all debt incurred by the Foundation on the College District's behalf, including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. Should the Foundation choose to terminate this Agreement, the College District may require the Foundation pay debt it holds on behalf of the Foundation in like manner.

G. Consistent with provisions appearing in the Foundation's articles of incorporation, should the Foundation cease to exist or cease to be an Internal Revenue Code 501(c)(3) organization, the Foundation will distribute its assets and property to the College District, a public community college district, which is organized and operated exclusively for educational purposes, or for the benefit of the College District in accordance with the law and donor intent.

IV. **INSURANCE.** The College District at its sole cost and expense, effective as of the date of this Agreement and continuing during its duration, will procure, pay for, and keep in full force and effect the following types of insurance, in at least the amounts and in the forms specified below and add the Foundation as an additional insured on its policies:

A. Comprehensive or commercial general liability insurance with coverage limits of not less than the combined single limit of bodily injury, personal injury, death and property damage liability per occurrence of two million dollars (\$2,000,000), insuring against any and all liability of the Foundation with respect to its operations or arising out of the maintenance, use, or occupancy of its administrative offices located at the College District or related to the exercise of any rights of the College District and the Foundation under this Agreement, subject to increases in amount as Foundation may reasonably require from time to time. All such liability insurance must specifically insure the performance by the College District and the Foundation of the indemnity agreement as to liability for injury to or death of persons and injury or damage to property set forth in section V, Indemnification of this Agreement. Further, all such liability insurance must include personal injury; blanket contractual, cross-liability, and severability of interest clauses; products/completed operations; broad form property damage; independent contractors; owned, non-owned, and hired vehicles; and, if alcoholic beverages are served, sold, consumed, or obtained in the Premises, then liquor law liability.

B. Worker's compensation coverage as required by law, including employer's liability coverage, with a limit of not less than one million dollars (\$1,000,000) and waiver by College District's insurer of any right of subrogation against Foundation by reason of any payment under such coverage.

C. The College District will provide the Foundation, its directors, officers, agents, and employees liability insurance.

V. INDEMNIFICATION. The College District agrees, to indemnify, defend, and hold harmless the Foundation, its directors, officers, agents, and employees from any and all loss, damage, or liability including, without limitation, liability for injury to or death of persons and injury or damage to property that may be suffered or incurred by them as a result of the College District's intentional act or negligence in carrying out this Agreement. The Foundation agrees to indemnify, defend, and hold harmless the College District, its trustees, officers, agents and employees from any and all loss, damage, or liability including, without limitation, liability for injury to or death of persons and injury or damage to property that may be suffered or incurred by them as a result of the Foundation's intentional act or negligence in carrying out this Agreement.

VI. NONASSIGNABILITY: This agreement is not assignable by either party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the day and date first above written.

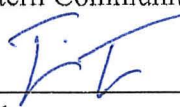
FOUNDATION

Southwestern College Foundation
a California Non-Profit Corporation

By:  _____ Date 8/9/16
Ricardo A. Macedo
Foundation Board, President

DISTRICT


Southwestern Community College District

By:  _____ Date 8-9-16
Tim Flood *da. party*
Acting Superintendent/President

Approved By:

DISTRICT

Southwestern Community College District

By:  _____ Date _____
Nora E. Vargas
Governing Board President

SWCF Approved: July 23, 2016

Approved as to form by the office of the
Purchasing, Contracting & Central Services
Director
Approval No.: A4960.16
Date: 7/26/16