

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE MIRACOSTA COMMUNITY COLLEGE
DISTRICT AND THE MIRACOSTA COLLEGE FOUNDATION**

THIS AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING ("Agreement") is entered into this _____ day of _____, by and between the MiraCosta Community College District ("District"), and the MiraCosta College Foundation ("Foundation") a nonprofit California corporation created and operated for the benefit of the District. This Agreement supersedes any prior agreement or memorandum of understanding between the parties, including the June 24, 2015, memorandum of understanding.

BACKGROUND AND PURPOSE

WHEREAS, the Foundation is an independent, 501(c)(3) nonprofit corporation. It has not been designated as a community college auxiliary organization described in Education Code §§ 72670 et seq., and it exists to serve the District; and

WHEREAS, the Foundation's purpose is to promote the interests and welfare of the District, accept and steward gifts and grants donated for the benefit of the District, and to actively assist the District in fundraising activities; the District initiates and implements fundraising and alumni/community outreach functions;

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

WHEREAS, the District believes that so long as the Foundation continues to adequately perform funds management and fundraising assistance to the District, as determined by the District, the District's best interests are served by continuing to support the Foundation's operations by providing personnel, certain facilities, and administrative services, including the services of the District's Associate Vice President of Institutional Advancement as set forth in this Agreement;

WHEREAS, the Board of Trustees of the District believes the services and funds provided by the Foundation to the District have a fair-market value in excess of the value of the facilities, administrative services, and personnel provided by the District to the Foundation.

NOW THEREFORE, the District and the Foundation hereby enter into this Agreement defining the parameters of their relationship.

ARTICLE I: Foundation's Responsibilities and Relationship to the District

The Foundation agrees to provide the District the following services:

- A. To receive and administer gifts of property, real or personal, financial or otherwise, to be used on behalf of the 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 benefit of the District in accordance with the District's needs and priorities.
- B. To hold, manage, and distribute assets in its possession for the dedicated purpose of supporting the mission of the District.
- C. To assist with fundraising efforts as defined by the District through the identification, cultivation, and solicitation of philanthropic contributors to the District.
- D. To continue to promote the District's best interest, when requested, within the region, state, and nation to raise the visibility and enhance the reputation of the District.
- E. To keep accurate and confidential financial records of donors and donor funds and to make such records promptly available to the District upon the District's request.
- F. To assist with the appropriate stewardship, recognition, and acknowledgement to donors through timely correspondence, gift clubs, and recognition events.
- G. To abide by ethical and legal practices as is in accordance with the Foundation's charitable 501(c)(3) status.
- H. To establish a financial plan to underwrite the cost of Foundation programs, operations, and services not provided by the District.
- I. To have a separate annual audit of the financial records of the Foundation conducted by an independent CPA auditing firm approved by the Foundation Board, and to make all audit information promptly available to the District by the end of the first quarter of each calendar year.
- J. Provide an annual financial report to the District Board of Trustees, including an annual statement describing the benefits and services of the Foundation.
- K. To develop and abide by gift acceptance guidelines and policies that are in accordance with the District's mission, goals, policies, procedures, and objectives.
- L. To provide seed grants for new program development and for the purpose of securing and stewarding institutional relationships and partnerships, including performing all tasks associated with grants, including, but not limited to, grant

writing, administering, and reporting.

- M. To provide scholarships to the students of the District in accordance with the awarding of those scholarships through the District's Scholarship and Financial Aid Office.
- N. To maintain and manage an endowment, including the establishment of fund agreements with donors, setting and implementing investment and spending policies and procedures that prudently steward the principal of the endowment and honor donor intent, as prescribed by the Uniform Prudent Investor Act, the Uniform Prudent Management of Institutional Fund Act, and other applicable California laws.
- O. To receive, hold, manage, invest, and disburse 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, and disposition or allocation of real estate or other forms of tangible property.
- P. To permit the following individuals to serve as non-voting advisors to the Foundation Board: the District Superintendent/President, the District Vice President of Administrative Services, the District Associate Vice President of Institutional Advancement, District Board of Trustees Liaison, and representatives of the following District organizations: Academic Senate, Classified Senate, and Associated Student Government.
- Q. To promptly disclose any terms, conditions, or limitations imposed by the donor or legal determination on any gift to be transferred or distributed to the Superintendent/President or designee on behalf of the District. Acceptance of gifts will follow the Foundation "Solicitation and Acceptance of Gifts" policy attached to this Agreement as Exhibit "A".
- R. To develop policies and procedures that will allow for the assessment of reasonable and proportionate gift and transaction fees, which will enable the Foundation to pay for a portion of the expenses associated with donor recognition as well as business operations of the Foundation, including reimbursing the District up to 25% of the District's Associate Vice President of Institutional Advancement and up to 40% of a full-time equivalent District accountant's compensation, , and other payments, as agreed by the parties. The compensation reimbursement for the Associate Vice President of Institutional Advancement and the Accountant will be agreed to by the parties annually prior to the start of the fiscal year. The Foundation's current "Administrative Costs Recovery" policy is attached to this Agreement as Exhibit "B" and are incorporated herein by this reference and will be reported to the District Board of Trustees when updated, as an informational item.
- S. To perform any and all other services as requested by the District that are consistent with the Foundation's mission and purpose.

ARTICLE II: District's Responsibilities and Relationship to the Foundation

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

- A. To continue to provide the Foundation with personnel, certain facilities, and administrative services and staff to serve the Foundation for the benefit of the District, as determined by the Superintendent/President or designee. The District will provide these staff members as follows: the service of the Associate Vice President of Institutional Advancement to serve as the Foundation's Chief Operating Officer. The District agrees to assign up to 40% of a full-time equivalent District accountant to provide accounting and banking service support. Foundation reimbursement limits and timelines for these services will be determined annually as described in Article 1 section R. of this MOU
- B. To assist with such marketing services, as is reasonably necessary, for the Foundation to accomplish its goals. Such assistance to include:
 - 1. Creation of a logo and brand identity for the Foundation that is congruent with the MiraCosta College name, brand identity, and image;
 - 2. Development and facilitation the MiraCosta College Foundation website; and
 - 3. Authorization to use the logo, brand identity, District name, images, and marketing brand in conformance with the District's branding guidelines, which may be modified by the District at any time.
- C. To provide information technology support including software, hardware, and functional support necessary to carry out its functions.
- D. To have the Superintendent/President of the District recommend for approval to the Board of Trustees, with the consultation of the Foundation Board, a person to serve as the Executive Director of the MiraCosta College Foundation. The Executive Director of the Foundation will be the District's Associate Vice President of Institutional Advancement, unless otherwise agreed by the District.
- E. To consider the recommendations of the Executive Director regarding staffing requirements of the Foundation and, if the Foundation determines it needs to hire personnel, to allow for the hiring of personnel through the District's normal processes and procedures as the District determines necessary.
- F. To support the operations of the Foundation by assigning, at the District's discretion, District personnel to assist the Foundation.
- G. To provide an accurate and fair process for the selection and awarding of scholarships, in conformance to the criteria established by scholarship donors.
- H. To communicate institutional priorities and long-term plans, as approved by the Board of Trustees and the 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.
- I. To allow the District Superintendent/President, or their designee, to assume an

appropriate role in the strategic aspects of fundraising activities, such as donor cultivation and community engagement.

- J. Acceptance of gifts on behalf of the District will follow the “Foundation Solicitation and Acceptance of Gifts” policy.
- K. District will allow the Foundation to occupy, operate, and use District property and services, either separately or jointly with the District, from time to time as agreed upon by the District and the Foundation. The Foundation’s must use such property or services in accordance with all District policies, rules, and regulations. The District has the right to enter and inspect all District facilities used by the Foundation and to revoke the Foundation’s right to use District property or services at any time.

ARTICLE III: Alignment of Interests

- A. The District Superintendent/President shall have the right to cause the Foundation to cease any activity of the Foundation deemed, in their judgment, to be contrary to the interests of the District or inconsistent with the policies and practices or purposes of the District. This provision shall survive the termination of this Agreement.
- B. The parties agree that if this Agreement is terminated and no new Agreement or Memorandum of Understanding is agreed to between the parties within a reasonable period of time, as determined by the District, then after the payment of all of its debts and liabilities, the remaining net assets of the Foundation shall, consistent with donor intent, the Articles and Bylaws of the Foundation, and the California Nonprofit Law (i.e., California Corporations Sections 5000-10841, as amended from time to time) be distributed to the District or be expended for the benefit of the District in accordance with a Plan of Distribution as approved by the Superior Court and/or the California Attorney General.
- C. The Foundation will not enter into any gift agreement for the benefit of the District that seeks to obligate the District without the District Superintendent/President's, or designee's, prior written approval.

ARTICLE IV: Non-assignability

- A. The Agreement is not assignable by either party.

ARTICLE V: Terms of Agreement

- A. The Agreement will be in effect until it is changed or terminated by written agreement of the parties; in addition, the Board of Directors of the Foundation are expected to initiate a review of the agreement at least every five years. The District may terminate this Agreement upon ninety (90) days written notice to the Foundation.

- B. The Foundation agrees that the District or its auditors may inspect and audit all of the Foundation's records and documents, and make copies of all such records and documents, to ensure the Foundation complies with the requirements of this section and this Agreement. The Foundation will make all such records and documents available for inspection, reproduction, and audit, within five (5) days of the District's request to inspect, reproduce, or audit records and documents.

ARTICLE VI: Leadership and Governance of the District and the Foundation

The Foundation and the District have two separate and different systems for the selection of their leadership and governance:

- A. The District is governed by the Board of Trustees, which is composed of elected individuals who represent the voters of the District, and by one student representative who has an advisory role, and is elected by the student body for a one-year term. The Board of Trustees is responsible for setting priorities and long-term plans for the District and is legally accountable for the performance and oversight of all aspects of the District. The Board of Trustees is responsible for the employment, compensation, and evaluation of the Superintendent/President of the District.
- B. The Foundation is governed by the voting Foundation Board members. The Foundation Board is responsible for the control and management of all assets of the Foundation, including the prudent management of all gifts consistent with donor intent. The Foundation Board is responsible for the performance and oversight of all aspects of its operations based on a comprehensive set of bylaws that address fiduciary responsibilities, including expectations of all individual Board members to comply with ethical guidelines and policies.
- C. The District is responsible for the employment, compensation, and evaluation of the Associate Vice President of Institutional Advancement, who will serve as the Foundation's Executive Director and Chief Operations Officer, unless otherwise agreed by the District. Foundation Board members will provide the District's Superintendent/President annual performance feedback regarding the Executive Director.

ARTICLE VII: Miscellaneous

- A. This Agreement and its attachments represent the entire and integrated agreement between the District and the Foundation, and supersede all prior understandings, negotiations, representations, or agreements, whether oral or written.
- B. If any court of competent jurisdiction holds any term, condition, or provision of this Agreement to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired, or invalidated in any way.

- C. No modification or amendment of any provision of this Agreement shall be effective unless the parties approve of the modification or amendment in an approved and signed writing. The parties will not construe the failure of a party to enforce any of the provisions of this Agreement as a waiver of such provisions and a party's failure to enforce any provisions of this Agreement shall not affect the right of either party thereafter to enforce each provision hereof in accordance with its terms.
- D. The parties may execute this Agreement in several counterparts, each of which the parties shall deem an original, but all of which together shall constitute one and the same agreement.
- E. The parties agree that time is of the essence and they shall perform the services required by this Agreement in an expeditious and timely manner so as not to unreasonably delay the purpose of this Agreement.

IN WITNESS WHEREOF, the Board of Trustees approve this Agreement on ____day of _____, 20__ and the Board of Directors approve this Agreement on ____ day of _____, 20__. The parties have executed this Agreement in duplicate at Oceanside, California, as of the date(s) written below.

**MIRACOSTA COMMUNITY COLLEGE
DISTRICT**

MIRACOSTA COLLEGE FOUNDATION

By: _____ Date: _____
 [Name]
 President, Board of Trustees
 MiraCosta Community College District

By: _____ Date: _____
 [Name]
 President
 MiraCosta College Foundation

Revision History
Current Agreement: date
First Amendment