

MASTER AGREEMENT BY AND BETWEEN  
THE YUBA COMMUNITY COLLEGE DISTRICT  
AND

THE YUBA COMMUNITY COLLEGE DISTRICT FOUNDATION

**INTRODUCTION**

This Agreement is made and entered into this 12th day of March 2020, by and between the YUBA COMMUNITY COLLEGE DISTRICT, a California community college District duly organized and existing pursuant to the laws of the State of California; specifically, the California Education Code, hereinafter referred to as the "District," and the YUBA COMMUNITY COLLEGE DISTRICT FOUNDATION, a non-profit organization duly organized and existing pursuant to the laws of the State of California and the Internal Revenue Code; specifically section 501(c)(3), hereinafter referred to as the "Foundation" an auxiliary organization established and operated as an integral part of the District.

**Section 1: RECITALS**

- A. The Foundation was organized and incorporated on October 27, 1972 for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, Foundations, and others for the benefit of the District.
- B. The District and the Foundation desire to enter into this Agreement to set forth the terms of the relationship between the District and the Foundation.
- C. The District wishes to designate the Foundation as an auxiliary organization pursuant to Education Code Section 72670, et seq., and Section 59250, et seq., of Title 5 of the California Code of Regulations.
- D. The Governing Board of the District has adopted Board Policy and Administrative Procedure 3600, which requires that all auxiliary organizations enter into a written agreement with the District.
- E. The District and the Foundation desire to enter into this Agreement in accordance with the District's policies and regulations regarding auxiliary organizations.

Mission. The Foundation shall create an environment conducive to supporting the mission, leadership, and priorities of the District and shall solely engage in activities which further and/or benefit the District and its mission.

Purpose & Function. The Foundation has been created to provide administration of the functions and activities described herein, instead of administration by the District. The Foundation is deemed to be more effective in accomplishing these functions and activities than would be possible under the District budgetary, purchasing and other fiscal procedures. The governing board of the District has determined that the value of fundraising, community and donor relations, gift and program administration and other services provided by the Foundation greatly exceeds the cost to the District of the provision of any facilities, property and other support as provided by this Agreement. The purpose of this Agreement is to establish the relationship between the District and the Foundation for the Foundation's solicitation and administration of programs involving gifts, bequests, devises and trusts on behalf of the District

pursuant to California Code of Regulations, title 5, section 59259, subdivision (j).

Areas of Service. The Foundation, through amendments to this Agreement and with the agreement of the District, may administer functions or activities defined in California Code of Regulations, title 5, section 59259. Other services may be provided if first approved by the Board of Governors, California Community Colleges. The Foundation will engage only in those activities that are in support of and consistent with state and federal laws and with the policies, rules, regulations and program goals of the District.

Foundation Functions. The Foundation may be providing services and performing the function of fundraising, receiving gifts, bequests and donations for the benefit and advancement of the District. Funding scholarships for current, prospective and transferring students and providing alumni activities and public relations programs.

All gifts, donations, bequests, private endowments, and private grants (the "donations") shall be used in accordance with the wishes of the donors as long as the donors' wishes are in accordance with the exempt purpose and functions of the Foundation and with the terms of this Agreement, and as long as the use of such donations does not in any way violate any federal or state restriction imposed on the Foundation, including, but not limited to, restrictions imposed as a result of the Foundation's status as a 501(c)(3) organization and/or an auxiliary organization.

Notwithstanding the foregoing, the Foundation shall not apply for, accept, or administer any grant funds that would require, as a condition of receipt of those funds, that specified program activities and/or services be provided by the District, unless the application for and receipt of such grant funds is approved by the Chancellor through the District's Vice Chancellor of Administrative Services. Other services, programs, functions or activities may be provided by the Foundation if such services are first approved by the Board of Directors of the Foundation and the District Governing Board.

Good Standing. The Foundation must remain in good standing with the District. Otherwise, this Agreement will immediately terminate and the Foundation will terminate any contracts with third parties and meet the provisions of this Agreement entitled *Distribution of Assets upon Cessation*.

Covenant Re Existence. During the term of this Agreement, the Foundation agrees to maintain its existence and to operate in accordance with California Education Code sections 72670-72680, and with the California Code of Regulations, title 5, Sections 59250-59270.

## **SECTION 2: FINANCE & LEGAL**

Submission of Annual Budget. The Board of Directors shall submit its budget for the next fiscal year to the Chancellor for his/her approval on or before the beginning of each fiscal year. Should the Chancellor determine that a program or appropriation planned by the Foundation is not consistent with the policies of the District Governing Board, then that program or appropriation shall not be implemented. Further, should a program or appropriation which had received approval, upon review, be determined by the Chancellor to be operating outside of the scope of the policies of the District Governing Board, then that program or appropriation shall be discontinued by direction of the Chancellor until further review is accomplished and an appropriate adjustment is made.

Approval of Expenditures. The Board of Directors of the Foundation shall approve all expenditures and fund appropriations of the Foundation. Appropriations of funds for use outside the normal business operations of the Foundation shall be approved in accordance with policy and further consistent regulations adopted by District.

Attorney and Accountant Services. The Board of Directors of the Foundation shall have the benefit of the advice and counsel of at least one attorney admitted to practice law in California, and at least one licensed certified public accountant. Neither the attorney nor the certified public accountant are to be members of the Board of Directors of the Foundation.

Annual Audit. The Board of Directors of the Foundation shall cause an annual fiscal audit of the Foundation to be conducted by a certified public accountant. This annual audit may be conducted as part of a fiscal audit of the District. The annual audit will include a review of the internal control structure and a report of recommendations. Copies of the annual audit report shall be submitted to the District within thirty (30) days after it is received by the Foundation. The Foundation shall annually publish the audited statement of its financial condition. The statement shall be disseminated as widely as feasible and be available to any person on request.

Foundation Records. The Foundation shall keep and maintain records and accounts of its operations, financial status and program expenditures in compliance with Foundation Board Policy 6.01: *Records Retention and Destruction*. Such records and reports may be maintained in the District office, and shall cover all activities of the Foundation whether pursuant to this Agreement or otherwise. The District shall have the right to inspect, copy and audit such records.

Annual Statement of Benefits. The Foundation shall provide the District with an annual statement describing the benefits and services of the Foundation to the District. This report shall be presented to the Governing Board of the District no later than 120 days following the close of the Foundation's fiscal year.

Expenditures for Public Relations: With respect to expenditures for public relations or other purposes which would serve to augment District appropriations for the operation of the District, the Foundation may expend funds in such amount and for such purposes as are approved by the Board of Directors of the Foundation. Prior to the expenditure of such funds, the Board of Directors of the Foundation shall file with the Chancellor a statement of the Foundation's policy on accumulation and use of public relations funds. The statement shall include the policy and procedure on solicitation of funds, sources of funds, purposes for which the funds will be used, allowable expenditures and procedures of control.

Real Property Matters: The Foundation Board of Directors shall not enter into any contract or other business arrangement involving real property without prior approval of the Chancellor or designee in accordance with District procedures and regulations.

Third Party Agreements: The Foundation shall not enter into any contract that would obligate the District, its facilities, equipment or personnel, without the prior written approval of the District.

### **SECTION 3: USE OF DISTRICT FACILITIES**

The Foundation, separately or jointly with the District, may occupy, operate, and use District facilities to accomplish the purposes of this Agreement. In consideration of the further terms of this Agreement, the District shall provide the Foundation with adequate space and equipment to perform its activities.

The Foundation's use of District facilities does not establish a landlord/tenant relationship between the District and Foundation, unless such a relationship is otherwise established by a separate written agreement entered into by the District and the Foundation.

Operations of the Foundation under this Agreement shall be integrated with the District

operations, and shall be under the general supervision of the District officials. Such supervision shall be provided without cost to the Foundation.

The right to use any of the District's facilities or equipment included in this Agreement or amendments shall cease upon sixty (60) days written notice to the Foundation and the Governing Board by the District Chancellor that the facilities are needed for the exclusive use of the District.

#### **SECTION 4: STAFF & SUPPORT SERVICES**

The District shall provide to the Foundation the services of a District employee to act as Executive Director of the Foundation, as follows: Under general direction of the Chancellor, the Executive Director of the Foundation shall organize, manage and direct the work of the Foundation in accordance with the policies and direction of the Foundation Board of Directors. The Executive Director shall act as staff liaison to the Foundation Board of Directors, and such other committees as designated by the Foundation Board of Directors.

The Executive Director of the Foundation shall serve as a member of the senior management team of the District and participate in meetings, events and activities associated with that role.

Additionally, the Executive Director shall formulate and propose policies and programs for operations, administration and fundraising for the Foundation, and, with the support and approval of the Foundation Board of Directors, shall execute those policies and programs. .

The Executive Director of the Foundation shall be engaged in accomplishing the Foundation's business and conducting District activities related to institutional advancement.

In addition to the Executive Director, the District shall provide to the Foundation, staff to support the efforts and duties of the Executive Director.

The Executive Director and any Foundation employee salaries, working conditions and benefits will be comparable to those provided to District employees performing similar services. Employees will be hired, evaluated and managed using District policies, procedures, and practices. The District shall provide all payroll services for Foundation employees.

#### **SECTION 5: REIMBURSEMENT FOR DISTRICT EXPENDITURES.**

The Foundation shall reimburse the District for direct expenditures incurred by the District as a result of the Foundation's activities (California Code of Regulations, Title 5, Section 59257). This reimbursement shall include, but not be limited to; District employees providing services under the direction of the Foundation, utility costs, maintenance costs and supplies.

The Foundation's reimbursement of these costs may be in the form of non-monetary benefits provided by the Foundation to the District, as authorized by California Attorney General Opinion 97-1105 (1998). The reimbursement shall be computed on a simple but equitable basis and shall be made by the Foundation within thirty (30) days of receipt of the invoice.

Any statement of non-monetary benefit provided by the Foundation to the District must be agreed upon between the District and the Foundation.

## **SECTION 6: INSURANCE & INDEMNIFICATION**

The District shall provide for the Foundation all risk liability coverage under the terms and conditions of the District's all-risk blanket policy. Further, the District will extend its directors and officers errors and omissions coverage to include the Foundation board members, officers, and managers.

In the event that the District is unable to maintain such coverage for the Foundation, the District shall provide (30) days notification to the Foundation of the District policy cancellation. In the event of such notice of cancellation by the District, the Foundation shall secure the appropriate coverage under its own name.

The District shall furnish and keep in full force and effect at all times during the term of this Agreement workers' compensation insurance covering all employees of the District engaged in performing the services required by this Agreement.

Indemnification. The Foundation 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 any of such facilities by the Foundation in connection with this Agreement; provided that the loss, damage or liability does not arise from the international or negligent acts or omissions of the District, its officers, agents or employees.

## **SECTION 7: INVESTMENT RELATED**

Disposition of Net Earnings. Net earnings derived from the operations of the Foundation shall be used solely to benefit the District and its students or used for reserves as established by the Board of Directors of the Foundation.

Investment Policy. The Foundation Board of Directors will establish and maintain a prudent investment policy. The Foundation Board of Directors may retain outside investment counsel, as necessary and that complies with appropriate Foundation and District Board Policies related to investment activity.

The Foundation will provide an informational report on investment activities to the District Governing Board no later than one hundred and twenty (120) days following the end of the fiscal year.

Allocation of Earnings. Income and investment growth generated by the Foundation in excess of costs and appropriate provision for equipment, maintenance, working capital and reserves shall be used for the general benefit of the students and District programs as determined by the executive director and approved by the Foundation Board of Directors.

## **SECTION 8: TERMINATION**

Termination of Agreement: This Agreement may be terminated by either party giving sixty (60) days' written notice, subject to the provision of this Agreement entitled Distribution of Assets upon Cessation. The Foundation shall have necessary use of facilities and assets for the Foundation to operate until termination.

Termination for Cause: Either party may terminate this Agreement for cause on sixty (60) days written notice to the other party. The party claiming the right to terminate hereunder shall set forth in such notice the facts underlying its claim that the other party is in breach of this

Agreement. Remedy of such breach within thirty (30) days of the receipt of such notice shall prevent the termination of this Agreement.

Effects of Termination: Upon termination of this Agreement, neither party shall have any further obligation hereunder except for (1) obligations occurring prior to the date of such termination; and (2) obligations, promises, or covenants contained herein which expressly extend beyond the term of the Agreement, including but not limited to those set forth in this Section. Upon termination or expiration of this Agreement, the Foundation shall within (30) days of such termination or expiration (1) vacate any District facilities and/or real property the Foundation is occupying; (2) return all District equipment and supplies to the District; (3) transfer all document and records in its possession relating to its administration of the services, programs, functions or activities described in Section 1.2 of Article I of this Agreement to the District; and (4) perform all other obligations required of the Foundation under the terms of this Agreement.

Distribution of Assets upon Cessation: Upon cessation of the operations of the Foundation under this Agreement, unless extended or renewed, the net assets of this Foundation resulting or arising from this agreement shall be either transferred to the District or expended for the benefit of the District or automatically revert to the District.

## **SECTION 9: TERMS**

Term of Agreement: The term of this Agreement shall be five (5) years beginning on the date of this Agreement, unless sooner terminated as herein provided; provided, however, that this Agreement shall be renewed automatically for subsequent annual periods, unless either party notifies the other party in writing not later than sixty (60) days prior to any renewal date of its intention not to renew.

Entire Agreement: The parties agree that this Agreement, represents the complete and exclusive statement of the agreement between the parties with respect to the subject matter hereof and supersedes all other agreements, oral or written, between them relating to the subject matter of this Agreement.

Notices: 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.

Notice to the Foundation shall be addressed as follows:

Executive Director  
Yuba Community College District Foundation  
425 Plumas Boulevard, Suite 200, Yuba City, CA 95991

Notice of the District shall be addressed as follows:

Chancellor  
Yuba Community College District  
425 Plumas Boulevard, Suite 200, Yuba City, CA 95991

Supersedure and Authorization: This Agreement supersedes all prior contracts between the parties with respect to its subject matter. It may be amended only by a fully executed written agreement of the parties. The individuals whose signatures appear below certify that this Agreement has been approved by their respective governing boards and has received all approvals required under California Law.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date first above written.

Yuba Community College District

By \_\_\_\_\_,  
Douglas Houston, Chancellor

Yuba Community College District Foundation

By \_\_\_\_\_,  
Thomas Lowden, Foundation Director

Ratified and Approved by the Governing Board

Yuba Community College District

By \_\_\_\_\_ Date: March 12, 2020  
Ric Teagarden, President

Ratified and Approved by the Board of Directors

Yuba Community College District Foundation

By \_\_\_\_\_ Date: March 3, 2020  
Wayne Ginsburg, President