

MASTER AGREEMENT BETWEEN
THE MONTEREY PENINSULA COLLEGE FOUNDATION AND
THE MONTEREY PENINSULA COMMUNITY COLLEGE DISTRICT

PREAMBLE

This Master Agreement (“Agreement”) is made and entered into this ___ day of _____, 2017 by and between the Monterey Peninsula College Foundation, hereinafter referred to as “Foundation”, a nonprofit, tax-exempt organization operated for the benefit of Monterey Peninsula College as an auxiliary organization described in Education Code section 72670(e), and the Monterey Peninsula Community College District, hereinafter referred to as “District”, on behalf of Monterey Peninsula College, hereafter collectively referred to as “College.” The District and the Foundation are sometimes hereinafter referred to collectively as the “Parties” or each individually as a “Party.”

RECITALS

WHEREAS, the District’s Governing Board adopted a resolution on August 25, 2009 (the “Resolution”); and

WHEREAS, the Resolution authorized the Superintendent/President to develop a revised Master Agreement between the District and the Foundation (“2010 Agreement”), wherein the Foundation becomes an auxiliary foundation as described in Education Code section 72670 et seq.; and

WHEREAS, the Resolution also adopted the recommendations of the Monterey Peninsula Community College District/Monterey Peninsula College Foundation Master Agreement Sub-Committee of August 11, 2009; and

WHEREAS, the 2010 Agreement was entered into by the District and Foundation on November 24, 2010; and

WHEREAS, a primary goal of the 2010 Agreement was to integrate the Foundation with the College in a more effective and formal manner as a part of an Institutional Advancement effort involving the Public Information Office and the Foundation, with guidance from the Superintendent/President; and

WHEREAS, the District and Foundation now desire to enter into a new Master Agreement to provide for continued coordination between the College and the Foundation,

and to provide for Executive Director services by the College's Vice President of Advancement.

BACKGROUND AND PURPOSE

The Foundation is a nonprofit corporation existing only to benefit the College, and has been ruled to have tax exempt status under §501(c)(3) of the U.S. Internal Revenue Code and Section 23701d of the California Revenue and Taxation Code. The Foundation activities to benefit the College are most efficiently performed by a nonprofit corporation designated herein as an auxiliary organization. So long as the Foundation is performing these functions for the benefit of the College, it is in the interests of the District and the College that the operations of the Foundation be supported by the District's provision of certain facilities and certain administrative services. It is contemplated that such facilities and services will impose little or no incremental cost upon the District, and that any such costs will be reimbursed by the Foundation.

The purposes of this Agreement include establishing the terms under which the District will provide facilities and administrative services to the Foundation and the manner of reimbursement to the College by the Foundation for those services and facilities, and establishing other parameters of the relationship between the District, College, and the Foundation. It is the judgment of the Board of Trustees of the District that the development services provided by the Foundation have a value to the College.

AGREEMENT

The Parties therefore agree as follows:

A. Use of Facilities

The Foundation may occupy, operate and use the District's facilities and property separately or jointly with the College as identified by agreements made from time to time by the Superintendent/President of the District, on behalf of the College or by the Facilities Scheduling Office, as appropriate, and the Executive Director of the Foundation ("Executive Director"), on behalf of the Foundation, pursuant to authorization by the Board of Directors of the Foundation. The Foundation shall use the facilities and property only for activities that support the Foundation's efforts to benefit the College. The Superintendent/President of the District or designee shall determine the facilities to be made available to the Foundation. While the availability of space at the College is limited, the Foundation is free to rent or occupy other space off-campus. The Parties will negotiate in good faith a facilities use agreement to be entered into after execution of the Agreement, which shall further provide for the terms of the Foundation's use of the College's facilities. The Foundation agrees to abide by the policies, rules, and regulations established by the College and District for the use of facilities at the College. Both Parties agree that it is in their mutual best interest to have the Foundation staff and offices on the College campus. The District will make every effort to provide space for the Foundation staff and offices. The

District will only exercise its right to terminate the Foundation's use of office space if the College is unable to reasonably accommodate all of the College's own activities without occupying the space provided to the Foundation. The right to use any of the District's facilities or equipment pursuant to the terms and conditions of this Agreement shall terminate upon ninety (90) days' written notice by the Superintendent/President, or as otherwise agreed to by the Foundation and District

Designated agents or employees of the College may enter the said facilities at any time for the purpose of examination, repairs, or audit of the District's property. The College will attempt to notify the Foundation's Executive Director ("Executive Director") in advance of such entry, when possible.

The Foundation and its directors, officers and agents shall be included in the District's insurance coverage through the Statewide Association of Community Colleges Memorandum of Coverage, which shall include specifically coverage for the Foundation use of the District's facilities, including activities on the premises of the College. However, when special events are sponsored by the Foundation, additional insurance coverage may be required by the District, at the Foundation's expense. Losses incurred by the Foundation because of deductibles or exclusions on insurance provided by the District shall be borne by the Foundation.

The Foundation agrees to indemnify, defend and hold harmless the District, the College, and the District's Board and members thereof, employees, officers, agents, and representatives (collectively, the "District Indemnitees"), from and against any and all claims, demands, losses, suits, actions, expenses, damages, or liability (including, but not limited to, attorneys' fees and costs including fees of consultants) of any kind, nature, and description (collectively, the "Claims"), that may be suffered or incurred by, caused by, arise out of, or are in any way connected with the use of the District's facilities by the Foundation except to the extent arising from or caused by an act or omission of the District.

B. Expenditures, Provision of Services

The Foundation shall reimburse the College for services performed by College employees under the direction of the Foundation incurred by the College as a result of the activities of the Foundation. The College shall invoice the Foundation for such expenditures, indicating items charged and the method of determining costs. The Foundation shall reimburse the College within thirty (30) days of the time any invoice is submitted.

Up to 50% of such reimbursements may be in the form of non-monetary benefits that the Foundation provides to the College, such as heightened awareness of the College within the community as well as other benefits as determined by the Superintendent/President. Such non-monetary benefits shall be assigned a good faith reimbursement value by the District.

The Foundation shall charge the College reasonable costs for services reasonably performed by the Foundation which are solely for the benefit of the College and

provide no direct or indirect benefit to the Foundation (such as preparation of grant applications by the Foundation for grant funds which are directed solely to the College and do not provide an administration or other fee payment to the Foundation), not to exceed the value of the services performed by College employees under the direction of the Foundation and invoiced by the College to the Foundation. The services shall be charged at cost, and shall be invoiced by the Foundation to the College. The invoice shall indicate items charged and the method of determining costs. The amount invoiced by the Foundation shall be deducted from the College's invoice to the Foundation for services provided by College employees, and shall be recognized as a monetary benefit to the College.

The College may provide certain services to the Foundation, which may include custodial and facilities maintenance services, equipment, and information systems service.

C. Reimbursement by Foundation

The College shall be reimbursed for the use by the Foundation of the District's facilities and related services during regular operational hours at an annual rate of \$1.00, or as otherwise provided in the facilities use agreement. For facilities use during non-operational hours, all labor and special equipment usage will be charged at direct cost according to the usage fee schedule for the College.

D. Covenant

During the term of this Agreement, the Foundation agrees to maintain its existence and to operate in accordance with all state and federal laws governing nonprofit organizations, including general regulations governing auxiliary organizations established by the Board of Trustees, implementing regulations, policies, and procedures established by the District (collectively, the "regulations"), and Education Code sections 72670 et seq. as they apply to auxiliary organizations.

E. Independent Financial Audit

An independent CPA firm selected by the College will be retained annually for financial audit and oversight in accordance with auditing standards generally accepted in the United States of America, with the costs of that service paid by the Foundation. Such financial reports, including management letters, shall be supplied to the College after they have been reviewed and approved by the Board of Directors of the Foundation, no later than 240 days after the close of the fiscal year.

F. Signs and Fixtures

During the term of this Agreement, the Foundation shall have the right to place and attach fixtures, signs, and equipment in or upon facilities as authorized by the Superintendent/President of the District or designee. Fixtures, signs or equipment so erected, placed or attached by the Foundation shall be and remain the property of the Foundation and shall be removed therefrom by the Foundation upon the termination

of this Agreement, at the expense of the Foundation and premises returned to their original condition.

G. Disposition of Earnings and Asset Management

Net income generated by the Foundation shall be used solely to benefit the College. Net income is defined as revenues minus expenses as defined by generally accepted accounting principles. The Foundation Board of Directors shall maintain an operational budget reserve, separate from any endowed funds, sufficient to cover operational expenses. The Foundation shall provide the Foundation's annual budget, and any proposed changes to an adopted budget, to the Superintendent/President of the District prior to adoption. The Superintendent/President of the District or designee will review the Foundation's annual budget or proposed changes, and may submit in writing, to the President of the Board of Directors of the Foundation, any concerns, suggestions, or recommendations regarding the Foundation's cost structure and budget within 30 days after the Superintendent/President receives the budget or proposed changes to the budget. The Board of Directors of the Foundation shall consider such concerns, suggestions, and recommendations, and shall have the right to adopt and implement the budget or proposed changes if a majority of the Foundation Board determines that the budget or subsequent changes are necessary or desirable to achieve the purpose of the Foundation.

The Foundation Board of Directors is responsible for the control and management of the assets of the Foundation, including the prudent management of gifts received by the Foundation, consistent with donor intent and District approval.

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 endowment and other gifts. The Foundation will periodically assess, no less frequently than annually, its gift management and acceptance policies. Copies of such policies and any revisions thereto, shall be shared with the Superintendent/President. The Foundation will promptly acknowledge and issue receipts for all gifts on behalf of the Foundation and the District and provide appropriate recognition and stewardship of such gifts. Endowment and investment policies established by the Foundation shall be consistent with District policies and applicable statutory regulations.

The Foundation will establish asset allocation, disbursement, and spending policies that adhere to applicable federal and state laws and applicable regulations. The Foundation will receive, hold, manage, invest, and disperse contributions of cash, securities and other forms of property, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred gift instruments. The Foundation's spending policies may only include reasonable business expenses that support the purpose of the Foundation for the College and which do not conflict with applicable law and regulations, including conflict of interest law. Spending policies, and any revisions thereto, shall be shared with the Superintendent/President.

Gifts designated specifically to the College will be distributed in a timely manner, in no event later than six (6) months from receipt of the donation, unless the donor's intent is to the contrary.

H. Public Relations and Marketing

With respect to expenditures for public relations, marketing or similar purposes, which would serve to augment District appropriations for the operation of the College, the Foundation may expend funds in such reasonable amounts, taking into consideration the unrestricted budget revenues of the Foundation, and for such purposes as are approved by the Board of Directors of the Foundation. The Foundation will manage and direct all public and media relations involving funding projects, events and campaigns in which the Foundation is involved. Materials and documents produced for public relations and marketing purposes under the direction of the Foundation will be reviewed by the Superintendent/President of the District prior to publication and distribution. The Foundation shall review any recommendations by the Superintendent/President, provided such recommendations are received within fifteen (15) days from the date such materials are submitted to the Superintendent/President. Consistent with the provisions of this Agreement and the purpose of the Foundation, the Foundation shall have the final authority to determine the form and content of such materials in regards to Foundation-specific activities.

I. Foundation Board of Directors to include District Superintendent/President

The District Superintendent/President or his/her designee shall serve as an ex-officio voting member on the Board of Directors of the Foundation.

J. Selection and Evaluation of Executive Director; Personnel

The Foundation is responsible for the employment, compensation and evaluation of all of its employees, with the exception of the Executive Director. The Executive Director shall not be employed by the Foundation. Instead, the College shall assign the College's Vice President of Advancement to perform the duties of the Executive Director, as the Vice President of Advancement plays a unique role in facilitating the relationship between the Foundation and the College. In recognition of this unique role, the Superintendent/President will solicit the input of the Foundation Board of Directors in both the selection process and the annual performance review of the Vice President of Advancement, as pertaining to the duties of the Executive Director.

The Parties agree that the responsibilities of the Executive Director which are performed under the direction of the Foundation or are solely for the benefit of the Foundation constitute ten percent (10%) of the Vice President of Advancement's duties. Pursuant to Section B of this Agreement, the College will invoice the Foundation for the Executive Director's ten percent (10%) share of the Vice President of Advancement's base salary. Fifty percent (50%) of the invoiced salary will be reimbursed through non-monetary benefits identified by the College on the invoice and credited to the Foundation. The Foundation shall reimburse the College for the

remaining fifty percent (50%) of the invoiced salary (which equals five percent (5%) of the Vice President of Advancement's base salary).

All Foundation personnel other than the Executive Director are employed directly by the Foundation, and will remain independent of the College and the District. Foundation personnel are not members of the College's bargaining units.

Foundation personnel costs shall be funded by the Foundation's budget. Staff is to be recruited incrementally subject to confirmation of available funding.

K. Coordinating the Solicitation of Gifts

Annually, or more frequently if desired by the Superintendent/President, the Superintendent/President will provide the Foundation with the District's needs and priorities. The Superintendent/President will work in conjunction with the Foundation leadership to identify, cultivate, and solicit prospects for private gifts. The College and Foundation recognize the importance of coordinating funding requests among various departments on campus and will adopt policies to govern this coordination. The College administration will use its best efforts to coordinate the solicitation by College staff members of individual, Foundation, and corporate gifts, with the Foundation. The Foundation will also act as a source of advice and support for College staff seeking such gifts. Nothing in this section will serve to prevent or deny the College, upon approval of the Superintendent/President, from pursuing fundraising activities when the Superintendent/President determines that those actions are in the best interests of the District.

Nothing herein shall affect the Foundation's ongoing maintenance of effort of its signature activities.

L. Insurance and Indemnification

The Foundation agrees to indemnify, defend and save harmless the District Indemnitees from and against any and all claims directly or indirectly arising out of, connected with, or resulting from any act, error, omission, negligence, or willful misconduct of the Foundation, its Board or members thereof, employees, agents, representatives, officers, or consultants in the performance of or failure to perform the Foundation's obligations under this Agreement or otherwise in connection with the operation of the Foundation as an auxiliary.

Except as otherwise provided in Section A of this Agreement, the Foundation shall, at its sole cost and expense, purchase and maintain during the entirety of this Agreement, insurance or indemnity protection, including liability insurance and worker's compensation insurance, as well as any additional insurance as may be required by law.

M. Third Party Agreement by Foundation

The Foundation has no authority to enter into contracts on behalf of the College or District. The Foundation shall not enter into any contract that would obligate designated District facilities or equipment without the prior written approval of the Superintendent/President of the District.

N. Distribution of Assets upon Dissolution or Cessation of Operations as Auxiliary

Upon cessation of operations of the Foundation under this Agreement, including by termination or breach of this Agreement, all properties and assets remaining after payment, or provision for payment, of all debts and liabilities of this Corporation, shall be distributed to one or more funds or organizations which are organized and operated exclusively for charitable or educational purposes and which have established their tax exempt status under Internal Revenue Code section 501(c)(3) (or the corresponding provisions of any future federal internal revenue law), or, to a governmental unit provided that the properties and assets so distributed are restricted for use exclusively for public purposes. If Monterey Peninsula College qualifies for such distribution under the preceding provisions of this sentence, the distribution shall be solely to Monterey Peninsula College. The District, at its sole discretion, may require the Foundation to transfer all assets in its possession to a successor nonprofit corporation qualifying as an auxiliary organization for the benefit of the College.

O. Non-Assignability

This Agreement is not assignable by either Party.

P. Term of Agreement

This Agreement will be in effect from _____, 2017 to June 30, 2021. Should a new agreement not be approved by the Governing Board of the District and the Foundation before expiration of the Agreement, this Agreement will continue in effect until a new agreement is approved by the Governing Board of the District and the Foundation.

Notwithstanding the foregoing, the Agreement may be terminated by the Governing Board of the District at any time upon ninety (90) days written notice to the Foundation. Immediately upon notice of termination, the Foundation shall arrange for the vacation and return of any space, facilities, equipment or other property of the District provided under this Agreement, and of assets as provided for in Section N of this Agreement.

Q. Entire Agreement and Amendments

This Agreement constitutes the entire and exclusive agreement between the Foundation and the District and it shall supersede all other agreements, written or oral, made by the Parties. This Agreement may be modified only in writing, signed by both the Foundation and the District.

R. 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, on behalf of the Foundation, by the Foundation's Executive Director, and received, on behalf of the District, by its Superintendent/President.

S. Severability

If any provision of this Agreement is held invalid, void, or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall not be affected and it shall remain in full force and effect, unless amended or modified by mutual consent of the Parties.

T. Facsimile Signatures and Execution in Counterpart

Signatures delivered electronically or by facsimile shall be as binding as originals upon the Parties so signing and delivering. This Agreement may be executed in counterparts, each of which shall constitute an original of the Agreement.

U. Warranty of Authority

Each person executing this Agreement on behalf of either Party does hereby personally represent and warrant that he or she had the authority to execute the Agreement on behalf of and to fully bind such Party.

IN WITNESS THEREOF, this Agreement has been executed in duplicate by the Parties hereto as of the date first above written.

MONTEREY PENINSULA
COLLEGE FOUNDATION

MONTEREY PENINSULA
COMMUNITY COLLEGE DISTRICT

By: Margi Wiest
Its: President

By: Dr. Walter Tribley
Its: Superintendent/President