

MEMORANDUM OF UNDERSTANDING  
BY AND BETWEEN THE  
THE SAN DIEGO COMMUNITY COLLEGE DISTRICT  
AND  
SAN DIEGO CONTINUING EDUCATION FOUNDATION

This Agreement is made and entered into by and between the San Diego Community College District and the San Diego Continuing Education Foundation

The San Diego Community College District operates three community colleges, the San Diego City College, San Diego Mesa College, and San Diego Miramar College and the District's San Diego Continuing Education. Recognizing the diversity of the communities served by San Diego Community College District and the desire to preserve the autonomy of each of the institutions, separate fundraising foundations have been authorized by the San Diego Community College District's Board of Trustees. However, to help bring about consistency and conformity, a memorandum of understanding (the "MOU") has been created and implemented in order to ensure that the roles and responsibilities of each foundation and the San Diego Community College District are clearly defined and agreed to in concept and practice.

The foundations are authorized to receive funds from and manage, administer and conduct campaigns for (a) gifts, bequests, devises, endowments, and trusts (b) loans, scholarships and grants-in-aids (c) workshops, conferences, institutes, and federal/state projects and (d) College, Continuing Education, and/or District-approved Foundation public relations programs on behalf of the respective Colleges or Continuing Education. However, any Planned Giving programs, which by definition are designed as donor-centered rather than donee-centered long-term fundraising programs to meet the philanthropic, family and tax-planning needs of the donor base, through sophisticated planned giving structures such as charitable remainder and lead trusts or other such gift planning structure, will only be administered through the San Diego Community College District's overarching non-profit organization (San Diego Community College Auxiliary Organization – SDCCAO) and will not fall under the purview of the Colleges or Continuing Education Foundations. However, any programs which have been identified as being specific to a College or Continuing Education entity will be recorded by the SDCCAO as being creditable to that specific entity.

**Preamble**

Consistent with its mission to help advance the plans and objectives of the District and San Diego Continuing Education specifically, the San Diego Community College District's, hereafter, referred to as the "District" Board of Trustees authorized the establishment of a foundation under the General Nonprofit Corporation Law (now the California Nonprofit Public Benefit Law) of the State of California as certified by the State of California, Secretary of the State on July 28, 2008. The District granted the Foundation the use of the name, the San Diego Continuing Education Foundation, hereafter, referred to as "Foundation".

The Foundation operates as a separate legal entity from the District having been granted tax-exempt status in accordance with Section 501 (c) (3) of the Internal Revenue Code in effect as of 1976 for charitable purposes to receive and administer contributions for the benefit of the San Diego Continuing Education, hereafter, referred to as the "CE".

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In accordance with the Bylaws of the Foundation, as set forth in Article I, the purpose of the Foundation is to operate exclusively for charitable, scientific, literary, or educational purposes, within the meaning of Section 501(c) (3) of the Internal revenue Code of 1986, as amended (the "Code"), or any successor provision, including promoting the advancement of education, through promoting, supporting, maintaining, developing and extending educational offerings and the pursuit thereof at or in connection with the College.

The District has specific legal authority to recognize as its auxiliaries, those fundraising foundations with respect to which the District directs or oversees the formation, corporate governance, management, and dissolution of such organizations. Therefore, the District has invited the three College and Continuing Education Foundations to enter into an MOU in order to define the roles and responsibilities of each of the Foundations and the District.

### **Purpose of the Foundation**

In accordance with the Foundation's Articles of Incorporation, it may solicit and receive gifts, grants, conveyances, devises and bequests of real and personal property from private and public sources, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the CE's programs to support its mission and priorities in providing opportunities for students in accordance with federal and state laws and all District Governing Board Policies and associated Administrative Procedures.

The Foundation and the District recognize that close collaboration and cooperation is necessary to appropriately serve the educational mission and priorities of the CE and avoid competition for funds or unproductive duplication of effort; therefore, the District and the Foundation agree to accept the following roles and responsibilities defined in this MOU, to engage in a periodic review of the roles and responsibilities, and as appropriate to modify this MOU to the mutual satisfaction of the Foundation and District.

### **Roles and Responsibilities of the Foundation**

The Foundation has the following roles and responsibilities:

- The Foundation is to have its own board of directors but should include provisions for certain ex-officio director appointments, such as members of the CE's executive team, and possible participation by District level representatives. The Foundation selects its own board of directors; however, the methodology adopted for nominations, selection, and maintenance of the board of directors is subject to review and approval by the District and is to be clearly delineated in the Foundation's By-Laws.
- The Foundation board of directors is obligated to follow consistent rules of operation and management as defined within its By-Laws and delineated in this MOU and to ensure that the Foundation continues to maintain its California non-profit public benefit corporate status and its tax-exempt status as defined in Internal Revenue Code Section 501 (c) (3) and as a "supporting organization" to the CE under Internal Revenue Code Section 509 (a) (3).
- The Foundation board of directors is required to update and maintain its corporate governing documents, primarily its Articles of Incorporation and Bylaws, in accordance with "best practices" as recommended by the District in compliance with California non-profit corporation law principles.

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- The Foundation is required to establish and strictly maintain all necessary public disclosure requirements as specified in governing law, as well as, requirements for meetings to be open to the public under the Brown Act. Each member of the Foundation board is required to annually file a Form 700, Statement of Economic Interests, with the District in accordance with the California Fair Political Practices Commission (FPPC) requirements; or a College or Continuing Education Foundation-approved “conflict of interest” statement, as defined within the Bylaws of the Foundation, as to form and content.
- The Foundation is authorized to manage its own fundraising program, other than a Planned Giving Program as described in this MOU, but must adhere to all District Governing Board Policies and Administrative Procedures, in particular with regard to BP7090: Gift Donations and its associated AP 7090.1, which are related to the District’s gift acceptance policy and procedures.
- The Foundation is required to remain compliant with State and local non-profit corporate law and applicable required corporate and charitable solicitation filings and procedures; as well as remain compliant with federal law governing charitable entities, to ensure maintenance of non-profit corporation status and federal and State tax-exempt status. For this purpose, the Foundation will establish policies and procedures for the management of all affairs of the Foundation in accordance with the requirements for tax-exempt entities under the federal Internal Revenue Code, including, but not limited to, section 501(c)(3), and accompanying federal regulations; under the non-profit corporate and tax laws of the State of California applicable to the Foundation, including, but not limited to, those governing charitable solicitations; and under the laws of the State of California governing community college auxiliaries, including, but not limited to, Sections 72670-72682 of the California Education Code and Regulation Sections 59250-59276 of the California Administrative Code, Title 5.
- The Foundation is not permitted to hire employees, with the exception of the *Employee Training Institute* (“ETI”) offered under CE’s Contract Education program; however, the Foundation is permitted to engage independent contractors and enter into other vendor contracts, provided the Foundation is responsible to ensure that appropriate year-end tax reporting statements for those payments are prepared and submitted to the appropriate taxing agencies. The Foundation assumes complete responsibility for contracts and obligations, entered into by or on behalf of the Foundation and is not authorized to enter into any contract or obligation in which performance is expected by either the College or the District.
- The Foundation, its directors and agents, shall be included in the District’s liability insurance policy, inclusive of errors and omissions, subject to the terms and conditions of the policy. The policy is subject to a \$1.0 million/per occurrence limit and a deductible. When special events are sponsored by the Foundation, the District, at the Foundation’s expense, may require separate insurance coverage. Losses incurred by the Foundation because of deductibles or exclusions on insurance provided by the District may be borne by the Foundation. The Foundation also agrees to indemnify, defend and save harmless the District, its trustees, agents and employees from any and all loss, damage or liability that may be suffered or incurred by them, caused by, arising out of, or in any way connected with the Foundation that is outside of the District’s liability insurance policy coverage.
- The Foundation is authorized by the CE and the District to have access to student contact information in accordance with the Family Education Rights and Privacy Act (FERPA) and District policy, in order to effectively perform services on behalf of the CE and the District in its fundraising efforts.

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- The Foundation is to expend its best effort to seek to receive or accrue contributions, gifts, grants, conveyances, devises, bequests or other transfers of money and real and personal property to or for the benefit of the CE, either outright or in trust. For this purpose, it will design and implement programs and procedures approved by the CE and consistent with the District's gift acceptance policy and procedures to solicit and receive such money and property and also to acquire such property by purchase, lease, exchange or otherwise, all to further the purposes of the educational mission of the CE.
- The Foundation will tender to the CE immediately all gifts and donations it may receive wherein the CE or District is designated as recipient, and properly account for and be responsible for all donations which designate the Foundation as recipient.
- The Foundation will accept, hold, administer, invest and disburse such funds and properties of any kind or character, as from time to time may be given or transferred to it, in accordance with the Foundation's own Gift Acceptance Policy and consistent with the District's gift acceptance policy and procedures provided, however, that any restricted or conditional gifts, with the exception of scholarships, administered on a non-discriminatory basis, or other gifts intended by the donor to be used for a particular CE program, which in any way obligates the District or CE shall not be accepted by the Foundation without the prior written consent of the CE President, District Chancellor or other District/CE official specifically delegated with written authority to approve such gifts on behalf of the District or CE.
- The Foundation will use all assets and earnings of the Foundation for the benefit of the CE or for payment of necessary and reasonable administrative expenses of the Foundation. No part of such assets and earnings shall accrue to the benefit of any director, officer, member, or employee of the Foundation or of any other individual, except for appropriate payment of reasonable compensation for services actually rendered or reimbursement of reasonable expenses necessarily incurred.
- The Foundation may not merge, consolidate, or change the Foundation's Articles of Incorporation without the written consent of the District.
- The Foundation board of directors is responsible for the control and management of all assets of the Foundation, including the prudent management of all gifts and contributions consistent with donor intent and applicable donor restrictions. The Foundation board of directors is expected to adopt a suitable Investment Policy.
- The Foundation is responsible for the performance and oversight of all aspects of its operations based on a comprehensive set of Bylaws that clearly address the board's fiduciary responsibilities, including expectations of individual board members based upon ethical guidelines and policies. The Foundation board of directors is expected to adopt a suitable Conflict of Interest policy.
- The Foundation may have the right to place and attach fixtures, signs and equipment in or upon facilities as authorized by the CE President, District Chancellor or his/her designee in writing as to number, size, and location. However, naming or renaming of new or existing facilities or other permanent installations require approval by the District Chancellor or his/her designee in writing and must be in accordance with District Board Policy 0800 and the associated Procedure 0800.1.

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- The Foundation may engage in public relations initiatives with the approval of the CE President; however, in order to provide a consistent District message in all communications to the greater community, all Foundation promotional materials must adhere to the District's Style Guide, which outlines standards to be used for logos and its elements (i.e., colors, typography, etc.). Any exceptions require approval by the District Chancellor or his/her designee in writing and in advance of production for materials to be distributed.
- The Foundation shall permit the President of the CE, or his/her designee, to review and/or copy all Foundation books, accounts and records at all reasonable times in order to determine compliance with the commitments made in this MOU. The President's designee may include institutional or state auditors. Nothing herein shall be deemed to affect the rights and responsibilities of the State Auditor.

### **Roles and Responsibilities of the District**

The District either directly or through its CE has the following roles and responsibilities:

- The District is to provide the Foundation with office space, including utilities, use of office furniture, file cabinets, and associated equipment, and warehouse space for temporary storage of donated materials and equipment. A value of these provisions will be determined during the annual audit process and will be considered as a contribution by the District to the Foundation.
- The District is to provide the Foundation with the use of office machines, technology, materials and services as reasonably required for its operation. A value of these provisions will be determined during the annual audit process and will be considered as a contribution by the District to the Foundation.
- The District, CE and Foundation recognize the expectation that the Foundation exists to provide both economical and non-monetary benefit to the CE as well as, public awareness. Through the close collaboration between the CE and the Foundation, the CE President will make the determination as to the impact of services provided to the Foundation by CE staff; such as, part-time professional or staff services. A value of these provisions will be determined during the annual audit process and will be considered as a contribution by the District to the Foundation.
- The District is to provide, at the request of the Foundation or CE President, legal support, which will be billed to the Foundation unless the matter has been referred at the request of the District, in which case the District shall be responsible for the costs associated with the legal support.
- The District and CE recognize that the Foundation is a separate non-profit corporation with the authority to keep all records and data confidential and consistent with the law.
- The CE President shall serve as an ex-officio member of the Foundation board of directors and shall assume a prominent role in fund-raising activities performed by the Foundation.
- When distributing gift funds to the CE, the Foundation will disclose any terms, conditions, or limitations imposed by the donor or legal determinations respecting the gift. The CE will abide by such restrictions and provide appropriate documentation.

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- Accounting and fiscal functions may be performed by the CE business office or by other CE staff working through the Foundation office.
- Until such time as the Foundation has accumulated resources sufficient to support operations, the District will engage an independent accounting firm to conduct an independent audit of the Foundation's financial and operational records annually and will provide the CE and the Foundation with a copy of the audited financial statements, including management letters. In addition, the District will engage suitable tax return preparers to file annual State and Federal tax reports and filings with a copy of all reports and filings provided to the Foundation and the CE.

### **Other Mutually Agreed Upon Matters**

- Independent Capacity: At all times and for all purposes of the MOU, each party shall act in an independent capacity and not as an agent or representative of the other party.
- No Indemnification: Except as otherwise expressly provided herein, each party shall be responsible for the actions and inactions of itself and its own officers, employees, and agents acting within the scope of their authority.
- Governing Law and Disputes. This MOU shall be governed by the laws of the State of California. In case of any dispute arising hereunder, a party, through its President, shall meet with the President, Chancellor or the designee of the other party and attempt in good faith to resolve the disagreement. Failing such attempt, the parties agree to use confidential binding arbitration to resolve the dispute because it is usually less expensive and quicker than litigation and will preserve the parties' privacy. It is understood and agreed that choosing binding arbitration waives a trial by jury. The place of the confidential binding arbitration will be in San Diego, California. Arbitration proceedings may be commenced by any party by giving all other interested parties written notice, and the proceedings shall be governed by the California Arbitration Act (Code Civ. Proc., § 1281 et seq.). The arbitrator must decide all disputes in accordance with that Act and the rules of any arbitration tribunal mutually selected by the parties. The arbitrator shall have the power to decide all matters, including arbitrability and legal questions raised by pleading or summary judgment motions. The arbitrator's award shall be final and binding, and a judgment upon the award may be entered and enforced by any court of competent jurisdiction.
- Entire Agreement: This constitutes the entire MOU of all parties including all oral understandings, on the subject of their general overall relationship. However, the parties may enter into other stand-alone agreements on specific subjects. All such other agreements shall also be in writing, signed by the parties, and approved as to form by the District legal counsel.
- Modification: No alteration or modification of any term of this MOU shall be valid unless made in writing, signed by the parties and approved by the District legal counsel.
- Termination: This MOU shall continue until terminated. It may be terminated by either party only at the end of a State fiscal biennium, upon written notice to the other party given at least (90) ninety days in advance. However the MOU or a successor overall agreement with the District shall be necessary for the Foundation to operate.

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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 Foundation or District Chancellor with a copy to the College President.

**Notice to the Foundation shall be addressed as follows:**

San Diego Continuing Education Foundation  
4343 Ocean View Boulevard  
San Diego, CA 92113-1915

**Notice to the District and Continuing Education shall be addressed as follows:**

San Diego Community College District  
3375 Camino del Rio South  
San Diego, CA 92108-3883

San Diego Continuing Education  
4343 Ocean View Boulevard  
San Diego, CA 92113-1915

In WITNESS WHEREOF, this Memorandum of Understanding has been executed by and on behalf of the parties on the date first entered above.

SAN DIEGO COMMUNITY COLLEGE DISTRICT

SAN DIEGO CONTINUING EDUCATION  
FOUNDATION

By: \_\_\_\_\_

By: \_\_\_\_\_

Constance M. Carroll, Ph.D., Chancellor

Adeline Williams, President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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