

MASTER AGREEMENT
BY AND BETWEEN
WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT FOUNDATION
AND
WEST VALLEY MISSION COMMUNITY COLLEGE DISTRICT

THIS MASTER AGREEMENT (the "Agreement") is entered into as of this 7th day of September, 2010, by and between WEST VALLEY MISSION COMMUNITY COLLEGE DISTRICT (the "District"), and the WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT FOUNDATION (the "Foundation"), a California nonprofit public benefit corporation.

RECITALS

- A. 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, which has been established as an auxiliary organization of the District pursuant to Education Code Section 72670 et seq. and Section 59250 et seq. of Title 5 of the California Code of Regulations.
- B. As required by Education Code Section 72670 et seq., the Board of Trustees of the District has adopted implementing regulations for auxiliary organizations which require that all auxiliary organizations enter into a written agreement with the District.
- C. The District and the Foundation desire to enter into this Agreement in accordance with the District's implementing regulations regarding auxiliary organizations.

AGREEMENT

NOW, THEREFORE, the parties covenant and agree as follows:

ARTICLE I

FOUNDATION PURPOSES AND FUNCTIONS

Section 1.1. Statement Regarding Use of Foundation. The administration by the Foundation of the functions and activities described in this Agreement, instead of administration by and through the District, is deemed to be more effective in accomplishing such functions and activities than would be possible under usual governmental budgetary, purchasing and other fiscal procedures.

Section 1.2. Foundation Functions. The Foundation will be providing services and performing the function of receiving gifts, grants, bequests, endowments and donations for the benefit and advancement of the District, funding loans, scholarships and grants for current and prospective students at the District, developing alumni activities for the District and providing public relations programs as described in the Bylaws of the Foundation (the "Bylaws"), which are attached to this Agreement as Appendix A. Other services, programs, functions or activities may be provided by the Foundation if such services are first approved by the Board of Governors of the California Community Colleges and the Board of Trustees of the District.

Section 1.3. Covenant to Maintain Existence. During the term of this Agreement, the Foundation agrees to maintain its existence and to operate in accordance with Education Code section 72670 et seq. and with section 59250 et seq. of Title 5 of the California Code of Regulations, as well as with District policy and the implementing regulations for auxiliary organizations adopted by the District.

ARTICLE II

ANNUAL AUDITS AND PROFESSIONAL SERVICES

Section 2.1. 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 need be members of the board of directors of the Foundation.

Section 2.2. 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 and management letter comments 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. A reasonable fee may be charged to cover the costs of providing such copies.

Section 2.3. Annual Budget. The Foundation shall also prepare for the District an annual budget of its revenues and expenses. This report shall be provided to the District prior to the beginning of each Foundation fiscal year.

Section 2.4. Foundation Records. The Foundation shall keep and maintain records and accounts of its operations, financial status and program expenditures for a period of not less than five (5) years following each budget period. Such records and reports may be maintained in the District office, subject to the terms of Article III of this Agreement. Such records and reports shall cover all activities of the Foundation whether pursuant to this Agreement or otherwise. The District shall have the right to inspect and audit such records and accounts during and/or following the close of any Foundation fiscal year following reasonable notification to the Foundation. The District shall also have the right to take custody of all records generated by the

Foundation in any way relating to its administration of the services, programs, functions or activities described in Section 1.2 of Article I of this Agreement. The rights and obligations provided in this Section shall survive the termination of this Agreement.

Section 2.5. 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 Board of Trustees of the District no later than 120 days following the close of the Foundation's fiscal year.

ARTICLE III

USE OF DISTRICT FACILITIES

Section 3.1. Use of District Facilities. The Foundation, separately or jointly with the District, may occupy, operate and use District facilities and property as identified in Appendix A to this Agreement, which may be amended from time to time, to accomplish the purposes of this Agreement. However, the Foundation's operations under any such amendment shall be integrated with District operations and shall be under the general supervision of District officials. Furthermore, it is understood and agreed that District officers, employees and agents shall have the right to enter any such facilities or any part thereof at any time for the purpose of examination or supervision. The Foundation's use of District facilities does not establish a landlord/tenant relationship between the District and the Foundation, unless such a relationship is otherwise established by a separate written agreement entered into between the District and the Foundation.

Section 3.2. Charge or Rental. Appendix A shall set forth the charge or rental to be paid to the District by the Foundation for the use of such facilities or property. Such charge or rental may be for less than fair rental value to the extent permitted by Section 81440(b) of the Education Code.

Section 3.3. Use of Facilities. The Foundation shall use the facilities and property of the District pursuant to Appendix A only for those services and functions that are consistent with this Agreement and consistent with the policies, rules and regulations which have been or may be adopted by the Board of Trustees of the District.

Section 3.4. District Right to Terminate. The right to use any of the District facilities or property granted in Appendix A shall cease upon written notice by the District that the facilities or property are needed for the exclusive use of the District.

Section 3.5. Maintenance and Operating Expenses. The Foundation agrees that it shall keep and maintain all such facilities and property in a clean and orderly condition and shall, at its own expense, at reasonably frequent intervals and in a lawful manner, dispose of all waste from such facilities and property. The Foundation further agrees that it shall keep all such facilities and property in good repair.

Section 3.6. Third Party Agreements By Foundation. 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. The Foundation has no authority to bind the District, by contract or otherwise, in any amount.

Section 3.7 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 intentional or negligent acts or omissions of the District, its officers, agents or employees.

Section 3.8. Signs, Fixtures and Equipment. During the term of this Agreement, the Foundation shall have the right to erect, place and attach fixtures, signs and equipment in or upon facilities as authorized by the Chancellor of the District in writing as to number, size and location. 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 or written direction of the Chancellor of the District.

Section 3.9. Restoration. Upon termination of this Agreement, the District shall have the option to require the Foundation, at the Foundation's expense and risk, to restore all such facilities as nearly as possible to the condition existing prior to the execution of this Agreement; provided, however, that if the Foundation shall fail to do so within ninety (90) days after the District exercises such option, the District may restore the property at the expense of the Foundation; and all costs and expenses of such restoration shall be paid by the Foundation upon demand of the District. The District shall have the right to exercise this option within thirty (30) days after the expiration of this Agreement, but not thereafter.

Section 3.10. Survival of Rights. The rights and obligations provided in this Article shall survive the termination of this Agreement.

ARTICLE IV

REIMBURSEMENT OF DISTRICT COSTS

Section 4.1. Reimbursement for District Expenditures. The Foundation shall reimburse the District for expenditures incurred by the District as a result of the Foundation's activities. This reimbursement shall include, but not be limited to, custodial and other District employee services, utility costs, maintenance costs and supplies. Appendix B includes a list of District employees providing services for the Foundation. The Foundation's reimbursement of these costs may be in the form of non-monetary in-kind benefits provided by the Foundation to the District, as authorized by California Attorney General Opinion 81 Ops. Atty. Gen. 111 (1998). The District shall annually invoice the Foundation for such expenditures, indicating items charged and the method of determining costs. 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. The Foundation may provide this reimbursement either by making monetary

reimbursement or by providing a statement of the in-kind contribution or benefits provided to the District by the Foundation, as may be agreed upon between the District and the Foundation.

Section 4.2. Indirect Costs Relating to Federal Programs. If the Foundation administers a federally-sponsored program, it shall reimburse the District for indirect costs associated with the performance of services by District for the Foundation relating to the federally-sponsored project. Such reimbursement shall take into consideration the District's federal indirect cost rate and the approved indirect cost allocation, if any, of the federal program award. In the event that the District's federal indirect cost rate has not been determined, the District's Chancellor shall determine and specify such costs and the amount thereof. All such reimbursements shall be made by the Foundation within thirty (30) days of receipt of an invoice with a determination of such costs.

ARTICLE V

DISPOSITION OF FOUNDATION ASSETS

Section 5.1. 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 the Chancellor of the District.

Section 5.2 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, source of funds, purposes for which the funds will be used, allowable expenditures and procedures of control.

Section 5.3. 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.

Section 5.4. Disposition of Assets Upon Dissolution. Upon dissolution of the Foundation or the cessation of its operations under this Agreement, its assets remaining after payment, or provisions for payment, of all debts and liabilities shall be distributed to either (i) a 501(c)(3) organization or (ii) a state or political subdivision of a state of the United States to be used exclusively for public purposes. Such organization shall be the District if it qualifies as such at the time of disposition, for its exclusive benefit.

ARTICLE VI

MISCELLANEOUS

Section 6.1. 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. In any event of termination, the provisions of Section 5.4 of Article V of this Agreement (concerning the distribution of assets upon dissolution) shall survive such termination.

Section 6.2. Termination. Either party may terminate this Agreement on sixty (60) days written notice to the other party if the party to whom such notice is given is in material breach of this Agreement. 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 the Agreement.

Section 6.3. Termination in Event of Foundation's Loss of Auxiliary Organization Good Standing. If and when the Chancellor or other designee of the District has reason to believe that the Foundation should be removed from the District's list of auxiliary organizations which are in good standing (the "Good Standing List"), that person shall give the Foundation's board of directors reasonable notice that a conference will be held to determine whether grounds for removal of the Foundation from the Good Standing List do in fact exist. Representatives of the Foundation's board of directors shall be entitled to be present at such conference and to be heard. Based upon such conference, the Chancellor or such other District designee shall recommend to the District Board of Trustees whether the Foundation should be removed from the Good Standing List, after which the District Board of Trustees, in its sole discretion, may remove the Foundation from said Good Standing List. Notwithstanding the terms of section 6.2, above, this Agreement shall immediately terminate on the Foundation's removal from the Good Standing List.

Section 6.4. 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 this Agreement, including but not limited to those set forth in this Section. Upon termination or expiration of this Agreement, the Foundation shall within thirty (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 documents 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.

Section 6.5. Non-Assignability; Amendment. This Agreement, either in whole or in part, is not assignable by the Foundation. This Agreement may not be altered or modified except by a writing signed by the parties.

Section 6.6. Notices. Any notice, request, information or other document to be given hereunder to any party by any other party shall be in writing and shall be deemed given and served upon delivery, if delivered personally, or three (3) days after mailing if sent by certified mail, postage prepaid, as follows:

If to District:

WEST VALLEY MISSION
COMMUNITY COLLEGE DISTRICT
14000 Fruitvale Avenue
Saratoga, CA 95070
Attn: CHANCELLOR

If to Foundation:

WEST VALLEY-MISSION COMMUNITY
COLLEGE DISTRICT FOUNDATION
14000 Fruitvale Avenue
Saratoga, CA 95070

With a copy to:

Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Drive, Suite 300
Cerritos, California 90703
Attn: Cindy Strom Arellano, Esq.

Any party may change the address or persons to which notices are to be sent to it by giving the written notice that such change of address or persons to the other parties in the manner provided for giving notice.

Section 6.7. Headings. The titles and headings of the various sections of this Agreement are intended solely for convenience of reference and are not intended to explain, modify or place any construction on any of the provisions of this Agreement.

Section 6.8. No Waiver. A party's failure to insist on the strict performance of any covenant or duty required by this Agreement, or to pursue any remedy under this Agreement, shall not constitute a waiver of the breach or the remedy.

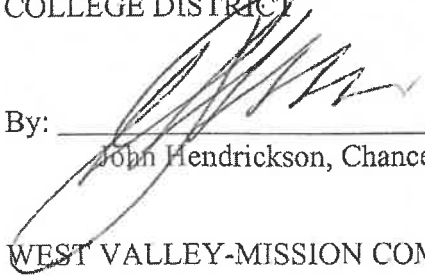
Section 6.9. Governing Law. The agreement shall be governed by and construed according to the laws of the State of California.

Section 6.10. Termination of Former Master Agreement. By executing this Agreement, the parties agree that the former Master Agreement entered into between the District and the West Valley-Mission Advancement Foundation is hereby terminated and is of no further force and effect.

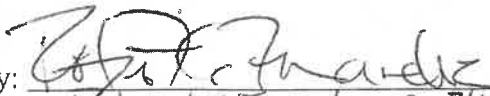
Section 6.11. Entire Agreement. This Agreement and any appendices to it contain all representations and the entire understanding and agreement among the parties. Correspondence, memoranda, and oral or written agreements that originated before the date of the Agreement are replaced in total by the Agreement unless otherwise expressly stated in this Agreement.

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

WEST VALLEY MISSION COMMUNITY
COLLEGE DISTRICT

By: 
John Hendrickson, Chancellor

WEST VALLEY-MISSION COMMUNITY
COLLEGE DISTRICT FOUNDATION

By: 
Robert C. Ferrante 8-24-10