

**AMENDED AND RESTATED
AGREEMENT BETWEEN THE EL CAMINO COMMUNITY COLLEGE DISTRICT
AND THE EL CAMINO COMMUNITY COLLEGE DISTRICT FOUNDATION**

THIS AMENDED AND RESTATED AGREEMENT, herein after known as the "Agreement," is entered into on this 19 day of April 2021, by and between the El Camino Community College District (ECCCD), hereinafter referred to as "the District," and the El Camino Community College District Foundation (ECCCDF), hereinafter referred to as "the Foundation," a nonprofit California corporation operated for the benefit of the District.

BACKGROUND AND PURPOSE

WHEREAS, the Foundation is an independent 501(c)(3) nonprofit corporation incorporated in April 1983 and has been registered and approved as a community college auxiliary organization described in Education Code §§ 72670 et seq. and Section 59257 of Title 5 of the *California Code of Regulations*, and exists to serve the District; and

WHEREAS, the Foundation is dedicated to providing, through fundraising and community outreach programs and working with donors, foundations and businesses, private resources for the long-term academic and other institutional priorities of the District; and

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 limited support to the Foundation to further both the District's and Foundation's purposes; and

WHEREAS, the District believes that so long as the Foundation continues to adequately perform funds management and fundraising assistance to the District, the District's best interests are served by continuing to support the Foundation's operations through the provision of personnel, certain facilities, and administrative services of the District; and

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 far surpassing 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 be the exclusive entity 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 that 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

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gift for the benefit of the District in accordance with the District's needs and priorities.

- B. To hold, manage, and distribute such 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 make such records available as appropriate upon receiving a written request by the District and in accordance with the California Public Records Act.
- F. To assist with the appropriate stewardship, recognition, and acknowledgement to donors through timely correspondence 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 have a separate annual audit of the financial records of the Foundation conducted by an auditing firm approved by the Foundation Board.
- I. To develop and abide by gift acceptance guidelines and policies in accordance with the District's mission, goals, and objectives.
- J. To provide seed grants for new program development for various departments of the college and grants to the college for the purpose of securing and stewarding institutional relationships and partnerships.
- K. To provide scholarships to the students of the College in accordance with the awarding of those scholarships through the Scholarship Office as managed by the Foundation.
- L. To maintain and manage endowment funds, 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.
- M. 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.

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- N. To permit service on the Foundation Board as non-voting advisors the District Superintendent/President, or his/her designee; a member of the El Camino Community College District Board of Trustees; one District classified employee representative; one District faculty representative, and one ECC student member from the Associated Student organization.
- O. To disclose any terms, conditions, or limitations imposed by the donor or legal determination on any gift transferred or distributed to the District.
- P. To develop policies and procedures that will allow for the assessment of reasonable and proportionate gift and transaction fees, enabling the Foundation to pay for a portion of the expenses associated with the business operations of the Foundation, as well as donor recognition.
- Q. Independent marketing campaigns for the Foundation in order to accomplish its goals including donor stewardship, events, public relations, advertising, collateral materials, and other means of marketing for the Foundation.
- R. To have and maintain a policy to disclose conflicts of interest of Board Members, donors or vendors and disclose to the District any and all conflicts of interest, whether apparent or actual.
- S. To establish and maintain a procedure in the event the Foundation dissolves, terminates or otherwise seizes operations.
- T. To comply with all requirements under the Family Education Rights and Privacy Act of 1974 (FERPA) and to keep confidential records and information and not disclose any or all of them to any third party without the express prior written consent of the individuals.

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 for the benefit of the District.
- B. Authorization to use the college name and marketing brand in conformance with the College's branding guidelines.
- C. To assist with the strategic aspect of promoting donor investment.
- D. To provide information technology support including software, hardware, and functional

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support necessary to carry out its functions.

- E. To have the Superintendent/President of the District recommend to the Board of Trustees, with the consultation of the Foundation Board of Directors, a person to serve as Executive Director of the Foundation.
- F. To consider the recommendations of the Executive Director regarding staffing requirements of the Foundation, and to allow for the hiring of personnel through the district's normal processes and procedures as determined necessary.
- G. To support the operations of the Foundation by assigning, at the District's discretion, District personnel to assist the Foundation.
- H. To support the Foundation's accurate and fair process for the selection and awarding of scholarships, in conformance to the criteria established by scholarship donors.
- I. To communicate institutional priorities and long-term plans as approved by the Board of Trustees and the leadership to the Foundation, and to include the Executive Director of the Foundation as an active participant in the collegial governance and the campus community.
- J. To expect the District Superintendent/President, or his/her designee, to assume a prominent role in Foundation fundraising activities.
- K. To honor the terms, conditions, or limitations imposed by donor or legal determination on any gifts transferred from the Foundation.

ARTICLE III: Alignment of Interests and Liability

So long as this agreement is in force and effect:

- A. The District Superintendent/President shall have the right to cause the Foundation to cease any activity deemed, in his/her judgment, to be contrary to the interests of the District or inconsistent with the policies and practices or purposes of the District.
- B. The Foundation Board of Directors shall include as voting members to its Board, as defined in the Foundation bylaws, the Superintendent/President, or his/her designee; a member of the District Board of Trustees; one District classified employee representative, one District faculty representative, and one District student member from the Associated Student Organization.
- C. Upon cessation of operations of the Foundation, the net assets of the Foundation, resulting in and arising from this Agreement, shall either be transferred to the District or expended for the benefit of the District, consistent with donor intent and the articles and bylaws of the

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Foundation.

- D. The Foundation will not enter into any contract for the benefit of the District or otherwise that seeks to obligate the District without the District Superintendent/President's prior approval.
- E. The Foundation agrees to indemnify, defend and save harmless the District, its officers, trustees, agents and employees from any and all loss, damages, claims or liability that may be suffered or incurred by the District, its officers, trustees, agents, and employees caused by, arising out of, or in any way connected with the use of the described facilities by the Foundation or 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.

ARTICLE IV: Non-Assignability

The Agreement is not assignable by either party.

ARTICLE V: Terms of Agreement

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 is expected to initiate a review of the agreement at least every five years and it may be terminated upon (30) days written notice.

ARTICLE VI:

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 one student representative who has an advisory role, 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 Foundation Board of Directors members that pursuant to its bylaws may include elected members, ex-officio, non-voting advisors, and honorary advisors. 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 of Directors is responsible for the performance and oversight of all aspects of its operations based on a comprehensive set of bylaws that

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address fiduciary responsibilities, including expectations of all individual Board members to comply with ethical guidelines and policies. The District Superintendent/President, or his/her District appointee, and the Foundation president are responsible for the employment, compensation, and evaluation of the Executive Director of the Foundation.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate at Torrance, California, as of the date written above.

THE DISTRICT:

**EL CAMINO COMMUNITY
COLLEGE DISTRICT**

By: Nilo Michelin Date 4-19-21
Nilo Michelin, President
Board of Trustees
El Camino Community College District

THE FOUNDATION:

**EL CAMINO COMMUNITY COLLEGE
DISTRICT FOUNDATION**

By: [Signature] Date 3/3/21
John Heffernan, President
El Camino Community College District
Foundation

By: [Signature] Date 3/3/2021
Janan Johnson, Secretary
El Camino Community College District
Foundation