

MASTER AGREEMENT

BY AND BETWEEN

SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT

AND

FOUNDATION FOR SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT

THIS MASTER AGREEMENT is approved and entered into as of this 19th day of October, 2020, by and between SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT, a community college district organized and existing under the constitution and laws of the State of California (the "District"), and the FOUNDATION FOR SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT, a nonprofit, public benefit corporation organized and existing under the laws of the State of California (the "Foundation") as an auxiliary organization of South Orange County Community College District.

RECITALS

- A. The District and the Foundation desire to establish the Foundation as an auxiliary organization of the District pursuant to Education Code Sections 72670-72680 et seq. and Sections 59250-59270 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 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.

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, bequests and donations for the benefit and advancement of the South Orange County Community College District (the "District"), funding scholarships for current and prospective students at the District and providing public relations programs as described in the Bylaws of the Foundation (the "Bylaws"), which are attached to the Agreement as Appendix A and incorporated by this reference. Other services, programs, functions or activities may be provided if 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 Sections 72670-72680 et seq. and with Sections 59250-59270 et seq. of Title 5 of the California Code of Regulations, as well as 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 at law nor the certified public accountant need be members of the board of directors of the Foundation. The Foundation may request legal and financial advice from the District on an as needed basis at no cost to the Foundation, except as specified in Section 3.8.

Section 2.2. Annual Audit, Review or Compilation. The board of directors of the Foundation shall cause an annual fiscal audit, review or compilation, of the Foundation, as determined by the officers of the corporation, to be conducted by an independent certified public accountant. This annual audit, review or compilation may be conducted as part of a fiscal audit of the District. Copies of the annual audit, review or compilation report shall be submitted to the Board of Trustees of the District within thirty (30) days after it is received by the Foundation. The Foundation shall annually publish the audited, reviewed or compiled 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.

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 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. In addition, each auxiliary organization shall publicly disclose, on an annual basis, the value of services performed by District employees under the direction of the auxiliary organization and a description of the commensurate benefits provided to the District by the auxiliary organization pursuant to Article IV.

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 B 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. A description of facilities to be used by the Foundation is set forth in Appendix B to this Agreement. 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. Provision of District Services. The District may provide printing, duplicating, mailing, postage, and joint publications; marketing and communications assistance; technology assistance; assistance to foundation staff on an as needed basis; visible and accessible office facilities and their maintenance; telephone, internet and related technical support; use of district name and logotype.

Section 3.3. Charge or Rental. Appendix B 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 3.4. Use of Facilities. The Foundation shall use the facilities and property of the District pursuant to Appendix B 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 3.5. District Right to Terminate. The right to use any of the District facilities or property granted in Appendix B shall cease upon written notice by the District that the facilities or property are needed for the exclusive use of the District. A minimum of 180 days' notice must be provided.

Section 3.6. 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 3.7. 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 3.8. 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 offers agents and employees, which is caused by, arising out of or in any way connected with the negligent or intentionally wrongful acts or omissions of the Foundation associated with the Foundation's use of District facilities under this Agreement at the Foundation's own cost.

The District agrees to indemnify, defend and hold harmless the Foundation, its officers, agents, and employees from any and all loss, damage or liability that may be suffered or incurred by the Foundation, its officers, agents and employees, which is caused by, arising out of or in any way connected with the negligent or intentionally wrongful acts or omissions of the District associated with the Foundation's use of District facilities under this Agreement

Section 3.9. 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 properties 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 3.10. 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 3.11. 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. Annually, utilizing the Schedule of Commensurate Return (Appendix C), the Foundation shall document the value of the services provided by District employees assigned directly to the Foundation. The amount of these services shall be covered by the Foundation utilizing both tangible and intangible benefits provided by the Foundation.

Tangible benefits are defined as any outlay of expenditure by the Foundation for any of the following:

- Financial support to the college, District, or any other auxiliary organization of the District
- Reimbursement of any portion of the salaries and benefits for the District employees assigned directly to the Foundation
- Student scholarships
- Contributions to athletic, student support, and/or instructional programs
- Promotional and/or marketing materials prepared by the Foundation

Intangible benefits are defined as any of the following:

- Time spent by the District employees assigned to the Foundation to organize and/or run college and/or District events
- In-kind services of Foundation board members
- Realized gains of endowments and other investments maintained by 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 Vice Chancellor of Business Services 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 or ratify 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 either be transferred to the District or expended for the benefit of the District.

ARTICLE VI

MISCELLANEOUS

Section 6.1. Term of Agreement. The term of this Agreement shall be five (5) years beginning on the first day of the month after recognition, 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. This agreement will be reviewed every five (5) years to ensure any changes made to governing regulations are properly incorporated.

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 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 Insurance. For its day-to-day activities, the Foundation shall be included within the District's insurance policies. When special events are sponsored by the Foundation, special insurance coverage may be required by the District and paid by the Foundation.

Section 6.7. 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:

South Orange County Community
College District
28000 Marguerite Parkway
Mission Viejo, California. 92692
Attn: Chancellor

If to Foundation:

Foundation for South Orange County Community
College District
28000 Marguerite Parkway
Mission Viejo, California 92692
Attn: Foundation President

With a copy to:

South Orange County Community
College District
28000 Marguerite Parkway
Mission Viejo, California, 92692
Attn: Vice Chancellor, Business
Services

With a copy to:

Foundation for South Orange County Community
College District
28000 Marguerite Parkway
Mission Viejo, California 92692
Attn: Foundation Secretary

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 6.8. 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 6.9. 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 6.10. Governing Law. The Agreement shall be governed by and construed according to the laws of the State of California.

Section 6.11. New Legislation. If, during the term of this agreement, new legislation is adopted by the California Legislature that affects the operation and function of the Foundation for the South Orange County Community College District, the District and the Foundation agree to abide by the new changes until an amendment to the agreement can be executed.

Section 6.12. Prior Agreements. This Agreement replaces and supersedes all prior agreements between the District and the Foundation.

Section 6.13. Amendment. This agreement may be amended only by written agreement signed by the parties.

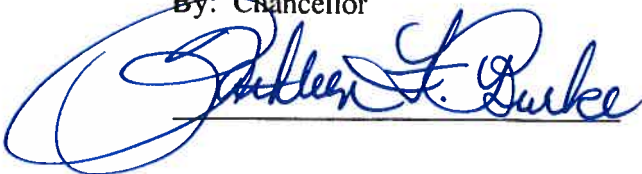
IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date set forth above.

SOUTH ORANGE COUNTY
COMMUNITY COLLEGE
DISTRICT

FOUNDATION FOR SOUTH ORANGE
COUNTY COMMUNITY COLLEGE DISTRICT

By: Chancellor

By: Foundation President



8/31/20

APPENDIX A

See Attached Bylaws

BYLAWS
OF
FOUNDATION FOR
SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT
A California Nonprofit Public Benefit Corporation

ARTICLE I

NAME AND OFFICES

Section 1. Name. The name of this corporation is the Foundation for South Orange County Community College District (the "Foundation"). It exists as an auxiliary organization of the South Orange County Community College District.

Section 2. Principal Office. The principal office for the transaction of the activities and affairs of the corporation is located at 28000 Marguerite Parkway, Mission Viejo, California. The board of directors may change the location of the principal office of the corporation to any place within the State of California.

Section 3. Other Offices. The board of directors may at any time establish branch or subordinate offices at any place the corporation is qualified to conduct its activities.

ARTICLE II

PURPOSES AND LIMITATIONS

Section 1. General Purposes. This corporation is a nonprofit public benefit corporation organized under the Nonprofit Public Benefit Corporation Law for public or charitable purposes. This corporation is not organized for the private gain of any person. The Foundation shall at all times be operated consistent with the policies of the South Orange County Community College District.

Section 2. Specific Purposes. Within the context of the general purposes stated above, this corporation is organized and at all times hereafter shall be operated exclusively to benefit the South Orange County Community College District (the "District"), its students and the community of which it is a part, in the following manner:

- (a) Serve as a vehicle for encouraging and receiving private supplemental funds to support programs and activities at the District and its colleges.

- (b) Participate in the organization and definition of fundraising activities and development of resources to benefit the District and its colleges;
- (c) Conduct periodic campaigns for gifts and contributions and receive gifts, bequests and donations to distribute or invest such funds for the benefit and advancement of the District and its colleges;
- (d) Solicit and provide scholarships for deserving students at the District colleges;
- (e) Assist the District colleges by providing funds for capital improvements;
- (f) Assist in building and maintaining a positive image of the District and its colleges by
 - (i) serving as "ambassadors of good will" for the District; and
 - (ii) sponsoring activities which allow for special recognition of deserving students, faculty and staff.
- (g) Otherwise assisting and supporting the District in the attainment of education, cultural and scientific goals.

This corporation shall be operated in connection with the District as specified in Internal Revenue Code section 509(a)(3).

Section 3. Limitations.

- (a) This corporation is organized and operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States internal revenue law. Notwithstanding any other provision of these bylaws, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of this corporation, and the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States internal revenue law, or (b) by a corporation, contributions to which are deductible under Sections 170(c)(2), 2055(a)(2) and 2522(a)(2) of the Internal Revenue Code of 1986 or the corresponding provisions of any future United States internal revenue law.
- (b) No substantial part of the activities of this corporation shall consist of lobbying or propaganda or otherwise attempting to influence legislation, except as provided in Section 501(h) of the Internal Revenue Code of 1986, and the corporation shall not participate or intervene (including publishing or distributing statements) in any political campaign on behalf of or in opposition to any candidate for public office except as provided in such Section 501(h).

- (c) The property of this corporation is irrevocably dedicated to the purposes set forth above. No part of the earnings of this corporation shall ever inure to the benefit of any directors or officers of this corporation or to the benefit of any private person.
- (d) Upon the dissolution and winding up of the corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of this corporation shall be distributed to the South Orange County Community College District, which is an organization described in Internal Revenue Code section 170(b)(1)(A) or 501(c)(3). If the District shall cease to be an organization described in Internal Revenue Code section 170(b)(1)(A) or 501(c)(3), the directors of this corporation shall designate a publicly supported educational or charitable organization as described in Internal Revenue Code sections 170(b)(1)(A) or 501(c)(3), in substitution for the District, for purposes of the articles of incorporation and these bylaws.

ARTICLE III

MEMBERSHIP

Section 1. Corporation without Members. The corporation shall have no members.

ARTICLE IV

BOARD OF DIRECTORS

Section 1. Number of Directors. The authorized number of Directors shall be five (5) until changed by an amendment of these bylaws. The authorized board members shall include: five (5) ex-officio directors who shall be (i) the District Vice Chancellor for Business Services, (ii) the District Vice Chancellor for Human Resources, (iii) the District Vice Chancellor for Technology and Learning Services, (iv) the District Executive Director, Fiscal Services/Comptroller; and (v) the District Executive Director, Public-Private Partnership Development.

Section 2. General Powers.

- (a) (General Powers. Subject to the provisions of the California Nonprofit Public Benefit Corporation Law and subject to any limitations in the articles of incorporation and these bylaws, the corporation's activities and affairs shall be managed and all corporate powers shall be exercised by or under the direction of the board of directors. The board may delegate the management of the activities of the corporation to any person or persons, management company, or committee however composed, provided that the activities and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the board.

- (b) **Specified Powers.** Without prejudice to such general powers, but subject to the same limitations, the board of directors shall have the power and authority to:
- (1) Except as otherwise provided in these bylaws, approve any action which would otherwise be required to be approved by members if this corporation had members.
 - (2) Appoint and remove all officers, agents, and employees of the corporation; prescribe such powers and duties for them as may not be inconsistent with law, with the articles of incorporation or with these bylaws; fix their compensation; and require from them security for faithful service.
 - (3) Change the principal executive office or the principal business office in California from one location to another; cause the corporation to be qualified to do business in any other state, territory, dependency, or foreign country; and conduct business within or outside California.
 - (4) Adopt, make and use a corporate seal and alter the form of such seal.
 - (5) Borrow money and incur indebtedness on behalf of the corporation and cause to be executed and delivered for the corporation's purposes and in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, or other evidences of debt and securities for such consideration; provided, however, that no loan shall be contracted on behalf of the corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the board of directors.

Section 3. **Term of Office.** All of the Directors of the corporation shall serve two (2) year terms, and may, if reappointed, serve consecutive terms.

Section 4. **Election of Directors.** Each director shall hold office for their full term of office as set forth in Section 3 of this Article and until a successor has been elected or appointed and qualified unless he or she has resigned or been removed or his or her office has been declared vacant in the manner provided in these bylaws.

Section 5. **Voting.** Each member of the board of directors shall have one vote. There shall be no proxy voting permitted for the transaction of any of the business of this corporation.

Section 6. **Resignation of Directors.** Except as provided below, any director may resign from the board at any time by giving written notice to the president, secretary or chief financial officer of the corporation and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Notwithstanding the above, except on notice to the California Attorney General, no director may resign if the corporation would be left without a duly elected director or directors.

Section 7. Removal of Directors. A director may be removed from office without cause by a majority vote of the total number of voting directors then in office.

Section 8. Restriction on Interested Persons as Directors. Notwithstanding any other provision of this Article IV, no more than forty-nine percent (49%) of the persons serving on the board may be interested persons. An interested person is (a) any person compensated by the corporation for services rendered to it within the previous 12 months, whether as a full-time or part-time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a director as director; and (b) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of such person. However, any violation of the provisions of this paragraph shall not affect the validity or enforceability of any transaction entered into by the corporation.

Section 9. Compensation of Directors. Directors may not receive compensation for their services as directors, but may receive such reimbursement of expenses as may be fixed or determined by resolution of the board of directors.

Section 10. Inspection by Directors. Each director shall have the right at any reasonable time to inspect all books, records, and documents of every kind and the physical properties of the corporation for a purpose reasonably related to such person's interest as a director. The right of inspection includes the right to copy and make extracts of documents.

Section 11. Vacancies. A vacancy in a director position because of removal, death, resignation or otherwise shall be filled in the same manner as the former occupant of the position was selected. Notwithstanding the foregoing, if the former occupant of the position was elected by approval of the board of directors and the number of directors then in office is less than a quorum, the vacancy may be filled by (a) the unanimous written consent of the directors then in office, (b) the affirmative vote of a majority of the directors then in office at a meeting held according to notice or waivers of notice in accordance with Section 5211 of the Nonprofit Public Benefit Corporation Law, or (c) a sole remaining director. Any person designated to fill a vacancy on the board of directors shall hold office for the unexpired term of his or her predecessor in office, subject to the power of removal contained herein.

Section 12. Attendance at Meetings. Directors shall be expected to attend all Board meetings. After three (3) consecutive unexcused absences, the Board Chair shall notify the Executive Committee of excessive absences. The Executive Committee shall recommend appropriate action on a case-by-case basis, which action may be taken by the Board in its discretion, under terms consistent with these bylaws.

ARTICLE V

MEETINGS OF THE BOARD OF DIRECTORS

Section 1. Place of Meetings. Meetings of the board of directors shall be held at any place within this State which has been designated from time to time by resolution of the board. In the absence of such designation, meetings shall be held at the principal office of this corporation.

Section 2. Annual Meeting. The board of directors shall hold an annual meeting, at such time as shall be fixed by the board of directors, for the purpose of organization, election of officers and transaction of other business.

Section 3. Regular Meeting. Regular meetings of the Board of Directors shall be held quarterly, at a place, date and time designated by the Chairman. Notice of the time and place of meeting shall be emailed to each director not less than seventy-two (72) hours before the date of such meeting at his/her last known email address. Such notices may be waived by any director.

All the regular meetings of the board, and meetings of standing board committees shall be open and public, and all persons shall be permitted to attend these meetings; provided, however, that the board may hold closed sessions during any meeting to consider those matters that may lawfully be considered in such sessions under Chapter 9 (commencing with § 54950) of Part 1 of Division 2 of Title 5 of the Government Code, known as the "Ralph M. Brown Act." Ad hoc meetings that do not result in commitments, decisions or recommendations to the Board of Directors are not subject to the "Ralph M. Brown Act."

Section 4. Special Meetings. Special meetings of the board of directors for any purpose or purposes may be called at any time the chairperson of the board, if any, the president, any vice president, the secretary, or any two directors, to be held at such time and place as shall be designated in the notice of meeting.

Section 5. Notice of Meeting. Notice of the time and place of special meetings of the board of directors shall be given by written notice delivered personally or sent by mail or e-mail or facsimile to each director at his or her address as shown on the records of the corporation. If mailed, such notice shall be deposited in the United States mail at least four (4) days before the date set for the meeting, in a sealed envelope so addressed, with postage thereon prepaid. If notice is given by e-mail or facsimile, such notice shall be sent at least forty-eight (48) hours before the time set for the meeting. The business to be transacted at any special meeting of the board shall be specified in the notice. If and when California Government Code sections 54950 et. seq. (the "Brown Act") shall apply to any meeting held by the Foundation, the Foundation shall comply with the requirements of the Brown Act.

Section 6. Quorum and Manner of Acting. A majority of the total number of directors in office shall constitute a quorum of the board of directors for the transaction of business. Every act or decision done or made by a majority of the directors present at a meeting at which a quorum is present shall be regarded as the act of the board of directors, subject to the more stringent provisions of the California Nonprofit Public Benefit Corporation Law, including, without limitation, those provisions relating to (a) approval of contracts or transactions in which a director has a direct or indirect material financial interest, (b) approval of certain transactions between corporations having common directorships, (c) creation of and appointments to committees of the Board, and (d) indemnification of directors. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of a director or directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

Section 7. Adjournment and Notice of Adjourned Meeting. Notwithstanding Section 6, above, a majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given unless the original meeting is adjourned for more than 24 hours. If the original meeting is adjourned for more than 24 hours, notice of any adjournment to another time and place shall be given, before the time of the adjourned meeting, to the directors who were not present at the time of the adjournment.

Section 8. Minutes of Meetings and Conduct. Regular minutes of the proceedings of the board of directors shall be kept in a book provided for that purpose. The board of directors may adopt its own rules of procedure insofar as such rules are not inconsistent with, or in conflict with, these bylaws, the articles of incorporation of the corporation or with the law.

Section 9. Brown Act. Board meetings shall be conducted in accordance with the Ralph M. Brown Act, commencing at section 54950 et. seq. of the Government Code.

Section 10. Conflict of Interest. No member of the Board shall be financially interested in any contract or other transaction entered into by the Board that is not in accordance with the conflict of interest provisions set forth in Education Code Sections 72670-72682. The following relationships are specifically deemed not permissible:

- (a) Any contract, other than an employment contract, directly between the Foundation and a Board member.
- (b) Any contract between the Foundation and a partnership or unincorporated association in which a Board member is a partner, or owner, or holder, directly or indirectly, or a proprietorship interest.
- (c) Any contract between the Foundation and a for-profit corporation in which a Board member is the owner or holder, directly or indirectly, of five percent (5%) or more of the outstanding common stock.
- (d) Any contract in which a Board member is interested, and without first disclosing such interest to the Board at a public meeting, influences or attempts to influence one or more Board to enter into the contract.

ARTICLE VI
OFFICERS

Section 1. Officers. The officers of the corporation shall be a president, a secretary and a chief financial officer. The President shall be the Vice Chancellor, Business Services of the District and shall hold his/her office as an ex-officio of the District. The Secretary shall be the Executive Director, Public-Private Partnership Development and shall hold his/her office as an ex-officio of the District. The Chief Financial Officer shall be the Executive Director, Fiscal Services/Comptroller and shall hold his/her office as an ex-officio of the District. The corporation may also have, at the discretion of the board of directors, a chairperson of the board, one or more vice presidents, one or more assistant secretaries, one or more assistant chief financial officers, and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article VI. Any two or more offices may be held by the same person, except that neither the secretary nor the chief financial officer may serve concurrently as either the president or the chairperson of the board.

Section 2. Election. The officers of the corporation, except for any ex-officio officers and such officers as may be appointed in accordance with the provisions of Section 3 of this Article, shall be elected by the board of directors, and each shall serve for a one (1) year term at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment.

Section 3. Other Officers. The board of directors may appoint and may authorize the president or other officers to appoint such other officers as the business of the corporation may require, including an executive director to manage the day-to-day actions of the corporation. Each officer so appointed shall hold office for such period and have such authority and perform such duties as are provided in these bylaws or as the board of directors may from time to time determine.

Section 4. Removal of Officers. Any officer appointed by the board of directors may be removed at any time, with or without cause or notice, by the board of directors. Subordinate officers appointed by persons other than the Board under Section 3 of this Article VI may be removed at any time, with or without cause or notice, by the board of directors or by the officer by whom appointed. Officers may be employed for a specified term under a contract of employment if authorized by the board of directors; such officers may be removed from office at any time under this section and shall have no claim against the corporation or individual officers or board members because of the removal except any right to monetary compensation to which the officer may be entitled under the contract of employment.

Section 5. Resignation of Officers. Any officer may resign at any time by giving written notice to the corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified in such notice; and, unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective. Any such resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

Section 6. Vacancies in Office. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these bylaws for regular appointments to such office.

Section 7. Responsibilities of Officers.

- (a) Chairperson of the Board. The chairperson of the board, if such an officer be elected, shall, if present, preside at all meetings of the board of directors and exercise and perform such other powers and duties as may be from time to time assigned to him or her by the board of directors or prescribed by the bylaws. If there is no president, the chairperson of the board shall in addition be the chief executive officer of the corporation and shall have the powers and duties of the president as prescribed in these bylaws.
- (b) President/Chief Executive Officer. Subject to such supervisory powers, if any, as may be given by the board of directors to the chairperson of the board, if there be such an officer, the president shall be the chief executive officer of the corporation and shall, subject to the control of the board of directors, have general supervision, direction and control of the activities and the officers of the corporation. He or she shall preside, in the absence of the chairperson of the board or if there be none, at all meetings of the board of directors. He or she shall have the general powers and duties of management usually vested in the office of president of a corporation, and shall have such other powers and duties as may be prescribed by the board of directors or these bylaws.
- (c) Vice President. In the absence or disability of the president, the vice presidents, if any, in order of their rank as fixed by the board of directors or, if not ranked, a vice president designated by the board of directors, shall perform all the duties of the president. When so acting, a vice president shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the board of directors or the bylaws, the president or the chairperson of the board.
- (d) Secretary.
 - (1) Minutes. The secretary shall keep or cause to be kept, at the principal executive office or such other place as the board of directors may order, a book of minutes of all meetings, proceedings and actions of directors and committees of directors. The minutes of each meeting shall state the time and place the meeting was held; whether it was annual, regular or special; if special, how it was called or authorized; the names of those present at board and committee meetings; and an accurate account of the proceedings. If the secretary is unable to be present, the secretary or the presiding officer of the meeting shall designate another person to take the

minutes of the meeting. The secretary shall keep or cause to be kept, at the principal office in California, a copy of the articles of incorporation and bylaws, as amended to date.

- (2) Notices, Seal, and Other Duties. The secretary shall give, or cause to be given, notice of all meetings of the members, the board of directors and committees of the board of directors required by these bylaws to be given. In case of the absence or disability of the secretary, or his or her refusal or neglect to act, such notices may be provided by the president, or by the vice president, if any, or by any person authorized by the president or by any vice president, or by the board of directors. The secretary shall keep the corporate seal, if any, in safe custody and shall have such other powers and perform such other duties as the board or the bylaws may prescribe.

(e) Chief Financial Officer.

- (1) Books of Account. The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of account of the properties and transactions of the corporation. The chief financial officer shall send or cause to be given to the directors such financial statements and reports as are required to be given by law, by these bylaws or by the board. The books of account shall at all reasonable times be open to inspection by any director.
- (2) Deposit and Disbursement of Money. The chief financial officer shall deposit, or cause to be deposited, all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the board of directors. He or she shall disburse the funds of the corporation as may be ordered by the board of directors, shall render to the president and directors, whenever they request it, an account of all of his transactions as chief financial officer and of the financial condition of the corporation, and shall have other powers and perform such other duties as may be prescribed by the board of directors or the bylaws. If so required by the board of directors, the chief financial officer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety as the board of directors shall deem appropriate. The chief financial officer shall submit such annual reports to the board of directors as required by law or as directed by the board of directors.

ARTICLE VII

INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHER AGENTS

Section 1. Right of Indemnity. To the fullest extent permitted by law, the corporation shall indemnify its directors, officers, employees, and other persons described in Section 5238(a) of the California Corporations Code, including persons formerly occupying any such position, against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred by them in connection with any "proceeding," as that term is used in that Section, and including an action by or in the right of the corporation, by reason of the fact that the person is or was a person described in that section. "Expenses," as used in these bylaws, shall have the same meaning as in Section 5238(a) of the California Corporations Code.

Section 2. Approval of Indemnity. On written request to the board by any person seeking indemnification under Section 5238(b) or Section 5238(c) of the California Corporations Code, the board shall promptly determine under Section 5238(e) of the California Corporations Code whether the applicable standard of conduct set forth in Section 5238(b) or Section 5238(c) has been met and, if so, the board shall authorize indemnification.

Section 3. Advancement of Expenses. To the fullest extent permitted by law and except as otherwise determined by the board in a specific instance, expenses incurred by a person seeking indemnification under these bylaws in defending any proceeding covered by those Sections shall be advanced by the corporation before final disposition of the proceeding, on receipt by the corporation of an undertaking by or on behalf of that person that the advance will be repaid unless it is ultimately determined that the person is entitled to be indemnified by the corporation for those expenses.

Section 4. Insurance. The board shall have the right to authorize and direct the officers of the corporation to cause the corporation to purchase and maintain insurance to the full extent permitted by law on behalf of its officers, directors, employees, and other agents, against any liability asserted against or incurred by any officer, director, employee, or agent in such capacity or arising out of the officer's, director's employee's or agent's status as such.

ARTICLE VIII

RECORDS AND REPORTS

Section 1. Maintenance of Corporate Records. The board shall cause the appropriate officers of the corporation to keep:

- (a) Adequate and correct books and records of account;
- (b) Written minutes of the proceedings of the board and committees of the board; and
- (c) A record of each director's name and address.

Section 2. Maintenance and Inspection of Articles and Bylaws. The secretary shall keep at the corporation's principal office the original or a copy of the articles of incorporation and bylaws as amended to date.

Section 3. Annual Report. The board shall cause an annual report to be sent to directors within 120 days after the end of the corporation's fiscal year. That report shall contain the following information, in appropriate detail, for the fiscal year:

- (a) The assets and liabilities, including the trust funds, of the corporation as of the end of the fiscal year;
- (b) The principal changes in assets and liabilities, including trust funds;
- (c) The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes;
- (d) The expenses or disbursements of the corporation for both general and restricted purposes; and
- (e) Any other information required by these bylaws.
- (f) If the income statements and balance sheets referred to in this section have not been audited, they shall be accompanied by the report of any independent accountants engaged by the corporation or the certificate of an authorized officer of the corporation that such financial statements were prepared without audit from the books and records of the corporation.
- (g) This requirement of an annual report shall not apply if the corporation receives less than \$25,000 in gross receipts during the fiscal year, provided, however, that the information specified above for inclusion in an annual report must be furnished to any director who requests it in writing.

Section 4. Annual Statement of Certain Transactions and Indemnifications. As part of the annual report to all directors, or as a separate document if no annual report is issued, the board shall cause to be annually prepared and mailed or delivered to each director a statement of any transaction or indemnification of the following kind within 120 days after the end of the corporation's fiscal year:

- (a) Any transaction
 - i. in which the corporation or its parent or subsidiary was a party,
 - ii. in which an "interested person" has a direct or indirect material financial interest, and
 - iii. which involved more than \$50,000, or was one of a number of transactions with the same interested person involving, in the aggregate, more than \$50,000.

- (b) Any indemnifications or advances aggregating more than \$10,000 paid during the fiscal year to any officer or director of the corporation under Article VII of these bylaws, unless that indemnification has already been approved by the directors under Section 5238(e) of the California Corporations Code.
- (c) For this purpose, an "interested person" is any director or officer of the corporation, its parent or its subsidiary. The statement shall include a brief description of the transaction, the names of interested persons involved, their relationship to the corporation, the nature of their interest in the transaction and, if practicable, the amount of that interest; provided that if the transaction was with a partnership in which the interested person is a partner, only the interest of the partnership need be stated.

ARTICLE IX

GENERAL CORPORATE MATTERS

Section 1. Checks, Drafts, and Evidences of Indebtedness. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of or payable to the corporation shall be signed or endorsed by the chief financial officer and the president, or such other officers of the corporation, and in such manner, as shall be determined by resolution of the board of directors.

Section 2. Contracts. The board of directors, except as the bylaws otherwise provided, may authorize any officer or officers or agent or agents to enter into any contract or execute any instrument in the name of and on behalf of the corporation. Such authority may be general or confined to one or more specific matters. Unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

Section 3. Loans and Borrowing. The board of directors shall not cause the corporation to make any loan of money or property to or guarantee the obligation of any director or officer unless approved by the Attorney General. No loan shall be contracted on behalf of the corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the board of directors.

Section 4. Deposits. All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the board of directors may select.

Section 5. Gifts. The board of directors may at their discretion accept on behalf of the corporation any contribution, gift, bequest, or devise for the general purposes or for any specific purpose of the corporation.

ARTICLE X

MISCELLANEOUS

Section 1. Fiscal Year. The fiscal year of the corporation shall end on the last day of June in each year unless otherwise determined by resolution of the board of directors.

Section 2. Rules. The board of directors may adopt, amend, or repeal rules not inconsistent with these bylaws for the management of the internal affairs of the corporation and the governance of its officers, agents, committees, and employees.

Section 3. Corporate Seal. The board of directors may provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the corporation, the date of its incorporation, and the word "*California*".

Section 4. Waiver of Notice. Whenever any notices are required to be given under the provisions of the Nonprofit Corporation Act of the state of California, or under the provisions of the articles of incorporation of the corporation, or these bylaws, a waiver thereof in writing signed by the persons entitled to such notice, whether dated before or after the time such notices are required to be given, to the extent permitted by law, shall be deemed equivalent to the giving of such notice.

ARTICLE XI

AMENDMENT TO BYLAWS

Section 1. Amendment to Bylaws. These bylaws may be amended at any regular meeting of the board of directors by a majority vote of the board of directors; provided, however, that if any provision of these bylaws requires the vote of a larger proportion of the board than is otherwise required by law, that provision may not be altered, amended, or repealed except by that greater vote.

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify that

1. I am the duly elected and acting secretary of the Foundation for the South Orange County Community College District, a California nonprofit public benefit corporation.

2. The bylaws to which this certificate is attached, comprising 14 pages, constitute the bylaws of such corporation as duly adopted by the board of directors of this corporation at a meeting of such board on June 12, 2018.

I further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of my own knowledge.

Dated: June 12, 2018

Secretary

APPENDIX B

DISTRICT FACILITIES USED BY FOUNDATION

None.

APPENDIX C

SCHEDULE OF COMMENSURATE RETURN TEMPLATE

20XX/XX Benefits to the Foundation and the District

District contribution to the Foundation

| | |
|--------------|-----------------------------|
| Salaries | \$XXX,XXX |
| Benefits | <u>\$XXX,XXX</u> |
| Total | (A) <u>\$XXX,XXX</u> |

Tangible/Monetary reimbursement

| | |
|--|------------------------------|
| Cash payments for salaries/benefits for District employees assigned directly to the Foundation | (XXX,XXX) |
| Foundation payments to/on behalf of College/District | (B) (XXX,XXX) |
| Other added tangible benefits to the College/District | (C) <u>(XXX,XXX)</u> |
| Total tangible/monetary reimbursement provided | (E) *<u>\$XXX,XXX</u> |

Intangible/Non-monetary reimbursement

| | |
|---|------------------------------|
| Other added intangible benefits from Foundation efforts | (D) <u>(XXX,XXX)</u> |
| Total intangible/non-monetary reimbursement provided | (F) *<u>\$XXX,XXX</u> |

| | |
|---|-----------------------------|
| Total Tangible and Intangible Reimbursements | (E+F) \$XXX,XXX |
| Total District Contribution to the Foundation | (A) <u>\$XXX,XXX</u> |

Total Remaining Reimbursement Required, if any

| | |
|--|--------------------------|
| (If this total is positive, the standard has been met) | <u>*\$XXX,XXX</u> |
|--|--------------------------|

***Foundation Payments to/on behalf of the College, District or any other auxiliary organization
(Tangible /Monetary)***

| | |
|-----------------|-----------|
| Department Name | \$XXX,XXX |
|-----------------|-----------|

Detailed description of specific expenditures made by Foundation on behalf of the College

| | |
|-----------------|-----------|
| Department Name | \$XXX,XXX |
|-----------------|-----------|

Detailed description of specific expenditures made by Foundation on behalf of the College

| | |
|-----------------|-----------|
| Department Name | \$XXX,XXX |
|-----------------|-----------|

Detailed description of specific expenditures made by Foundation on behalf of the College

| | |
|-----------------|-----------|
| Department Name | \$XXX,XXX |
|-----------------|-----------|

Detailed description of specific expenditures made by Foundation on behalf of the College

| | |
|-----------------|-----------|
| Department Name | \$XXX,XXX |
|-----------------|-----------|

Detailed description of specific expenditures made by Foundation on behalf of the College

Total Foundation Payments to/on behalf of the College, District or any other auxiliary organization (Tangible/Monetary) (B) \$XXX,XXX

Other Added Benefits Provided to the College/District (Tangible/Monetary)

Scholarships \$XXX,XXX

A large percentage of the temporarily restricted funds raised are used to offer scholarships to students, which have a direct impact on the College community.

In-Kind contributions \$XXX,XXX

Every year a number of in-kind contributions are donated to a variety of programs across campus. This year's in-kind donations include, but are not limited to _____.

Promotional and/or Marketing \$XXX,XXX

Details of promotional and/or marketing material provided by the Foundation on behalf of the College/District.

Total Other Added Benefits Provided To the College/District (Tangible/Monetary) (C) \$XXX,XXX

Other Added Benefits to the District from Foundation Efforts (Intangible/Non-monetary)

Event Name \$XXX,XXX

Details of college specific event and amount of time spent by Foundation personnel supporting the event. Support must be provided using time tracking for each Foundation employee to justify this expense.

In-Kind Services of Board Members \$XXX,XXX

Details of time spent by members of the Foundation Board of Directors. Support must be provided for each Foundation Board member to justify this expense.

Realized Investment Gains \$XXX,XXX

Details of realized gains on endowments and other investments maintained by the Foundation. Support must be provided from prior year's audited financial statements.

Other \$XXX,XXX

Description of any other non-monetary benefits provided to the College community.

Total Other Added Benefits to the District from Foundation Efforts (Intangible/Non-monetary) (D) \$XXX,XXX

* Excess amounts contributed in any fiscal year cannot be rolled forward or backward to other fiscal years to offset amounts owed