

MASTER AGREEMENT

BY AND BETWEEN

ATEP FACILITIES CORPORATION

AND

SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT

THIS MASTER AGREEMENT (the "Agreement") is entered into as of this 24th day of April, 2023, by and between the SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT (the "District"), and the ATEP FACILITIES CORPORATION (the "Facilities Corporation"), a California nonprofit public benefit corporation.

RECITALS

- A. The District and the Facilities Corporation desire to enter into this Agreement to set forth the terms of the relationship between the District and the Facilities Corporation, an auxiliary organization of the District pursuant to Education Code Sections 72670-78680 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 Facilities Corporation 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

FACILITIES CORPORATION PURPOSES AND FUNCTIONS

Section 1.1. Statement Regarding Use of Facilities Corporation. The administration by the Facilities Corporation 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. Facilities Corporation Functions. The Facilities Corporation will be providing services and performing functions relating to the operations, leasing, maintenance, and management of the District's facilities and properties. Other services, programs, functions, or activities may be provided

by the Facilities Corporation if such services are authorized and 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 Facilities Corporation agrees to maintain its existence and to operate in accordance with this Agreement and with Education Code Sections 72670-72680 et seq. and Sections 59250-59270 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 Facilities Corporation 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 Facilities Corporation.

Section 2.2. Annual Audit. The board of directors of the Facilities Corporation shall cause an annual fiscal audit, review, or compilation, of the Facilities Corporation, as determined by the officers of the Facilities 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. If an audit is conducted, the annual audit will include a review of the internal control structure. The auditors will also issue a separate report of findings, if there are findings noted during the review of internal control and performance of audit procedures. Such report will also include recommendations related to those findings. Copies of the annual audit, review, or compilation report shall be submitted to the District within thirty (30) days after it is received by the Facilities Corporation. The Facilities Corporation 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 Facilities Corporation shall also prepare for the District an annual budget of its revenues and expenses.

Section 2.4. Facilities Corporation Records. The Facilities Corporation 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 Facilities Corporation 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 Facilities Corporation fiscal year following reasonable notification to the Facilities Corporation. The District shall also have the right to take custody of all records generated by the Facilities Corporation 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 Facilities Corporation shall provide the District with an annual statement describing the benefits and services of the Facilities Corporation 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 utilizing the Schedule of Commensurate Return (Appendix B).

ARTICLE III

USE OF DISTRICT FACILITIES

Section 3.1. Use of District Facilities. The Facilities Corporation, separately or jointly with the District, may occupy, operate, and use District facilities and property to accomplish the purposes of this Agreement. 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 Facilities Corporation's use of District facilities does not establish a landlord/tenant relationship between the District and the Facilities Corporation, unless such a relationship is otherwise established by a separate written agreement entered into between the District and the Facilities Corporation.

Section 3.2. Charge or Rental. As of the date of this Agreement, the Facilities Corporation does not use or occupy any District facilities or property. Should the Facilities Corporation subsequently use and/or occupy any District facilities or property, the parties shall amend this Section 3.2, in accordance with Section 6.5 below, to incorporate the corresponding charge or rental for the use and/or occupation of such facilities or property. The parties acknowledge that the rent the Facilities Corporation agrees to pay to the District in such event 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 Facilities Corporation shall use the facilities and property of the District 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 hereunder 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 Facilities Corporation agrees that it shall keep and maintain all utilized 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 Facilities Corporation further agrees that it shall keep all such facilities and property in good repair.

Section 3.6. Third Party Agreements By Facilities Corporation. The Facilities Corporation shall not enter into any contract that would obligate the District, its facilities, equipment, or personnel, without the prior written approval of the District, except for those contracts entered into in connection with or as otherwise required by that certain Asset Management Agreement by and between the Facilities Corporation and the District (the "AMA"). The Facilities Corporation has no authority to bind the District, by contract or otherwise, in any amount, unless specifically authorized under the AMA.

Section 3.7 Indemnification. The Facilities Corporation 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, which is caused by, arising out of, or in any way connected with the negligent or intentionally wrongful acts or omissions

of the Facilities Corporation associated with the Facilities Corporation's use of District facilities under this Agreement at the Facilities Corporation's own cost.

The District agrees to indemnify, defend, and hold harmless the Facilities Corporation, its officers, agents, and employees from any and all loss, damage, or liability that may be suffered or incurred by the Facilities Corporation, 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 Facilities Corporation's use of District facilities under this Agreement.

Section 3.8. Signs, Fixtures and Equipment. During the term of this Agreement, the Facilities Corporation 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 Facilities Corporation shall be and remain the property of the Facilities Corporation and shall be removed therefrom by the Facilities Corporation 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 Facilities Corporation, at the Facilities Corporation'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 Facilities Corporation 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 Facilities Corporation; and all costs and expenses of such restoration shall be paid by the Facilities Corporation 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 Services of District Employees. The Facilities Corporation shall monetarily reimburse the District for the District's direct compensation and employee benefit expenditures for any services performed by District employees in support of the Facilities Corporation. The District shall provide the Facilities Corporation with a monthly invoice for the amount of such expenditures. The Facilities Corporation shall pay such invoice within thirty days of the Facilities Corporation's receipt of the invoice by the delivery to the District of a check for the amount of the invoice.

Section 4.2. Reimbursement for District Expenditures. The Facilities Corporation may be required to reimburse the District for expenditures incurred by the District as a result of the Facilities Corporation's activities at the District's request. This reimbursement shall include, but is not limited to; custodial and other District employee services, utility costs, maintenance costs, and supplies. The Facilities Corporation's reimbursement of these costs may be in the form of non-monetary benefits provided by the Facilities Corporation to the District, as authorized by California Attorney General Opinion 81 Ops. Atty. Gen. 111 (1998). The District shall annually invoice the Facilities Corporation for such expenditures, indicating items charged and the method of determining costs. The reimbursement shall be computed on a simple but equitable basis. The

Facilities Corporation shall provide this reimbursement within thirty (30) days of receipt of the invoice, either by making monetary reimbursement or by providing a statement of the in-kind contributions or benefits provided to the District by the Facilities Corporation, as may be agreed upon between the District and the Facilities Corporation.

In case of payment dispute, the Facilities Corporation shall make the District aware of said dispute upon submission of payment. If it is later determined that the Facilities Corporation's dispute is valid and that the Facilities Corporation overpaid, the District shall promptly reimburse the Facilities Corporation any excess payment submitted by the Facilities Corporation.

Section 4.3. Indirect Costs Relating to Federal Programs. If the Facilities Corporation administers a federally-sponsored program, it shall reimburse the District for indirect costs associated with the performance of services by the District for the Facilities Corporation 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 or designee shall determine and specify such costs and the amount thereof. All such reimbursements shall be made by the Facilities Corporation within thirty (30) days of receipt of an invoice with a determination of such costs.

ARTICLE V

DISPOSITION OF FACILITIES CORPORATION ASSETS

Section 5.1. Approval of Expenditures. The board of directors of the Facilities Corporation shall approve all expenditures and fund appropriations of the Facilities Corporation. Appropriations of funds for use outside the normal business operations of the Facilities Corporation 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 Facilities Corporation may expend funds in such amount and for such purposes as are approved by the board of directors of the Facilities Corporation. Prior to the expenditure of such funds, the board of directors of the Facilities Corporation shall file with the Chancellor a statement of the Facilities Corporation'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 Facilities Corporation shall be used solely to benefit the District and its students or used for reserves as established by the board of directors of the Facilities Corporation.

Section 5.4. Disposition of Assets Upon Dissolution. Upon dissolution of the Facilities Corporation 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 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.

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 Facilities Corporation's Loss of Good Standing. If and when the Chancellor or other designee of the District has reason to believe that the Facilities Corporation 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 Facilities Corporation's board of directors reasonable notice that a conference will be held to determine whether grounds for removal of the Facilities Corporation from the Good Standing List do in fact exist. Representatives of the Facilities Corporation'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 Facilities Corporation should be removed from the Good Standing List, after which the District Board of Trustees, in its sole discretion, may remove the Facilities Corporation from said Good Standing List. Notwithstanding the terms of section 6.2, above, this Agreement shall immediately terminate on the Facilities Corporation'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 Facilities Corporation shall within thirty (30) days of such termination or expiration (1) vacate any District facilities and/or real property the Facilities Corporation 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 Facilities Corporation 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 Facilities Corporation. 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:

SOUTH ORANGE COUNTY
COMMUNITY COLLEGE
DISTRICT
28000 Marguerite Parkway
Mission Viejo, CA 92692

Attn: Ann-Marie Gabel
Vice Chancellor,
Business Services

If to Facilities Corporation:

ATEP FACILITIES CORPORATION

28000 Marguerite Parkway
Mission Viejo, CA 92692

Attn: Medhanie Ephrem
Facilities Corporation 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 6.7. 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.

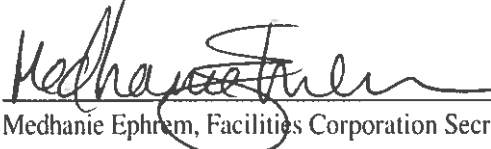
Section 6.9. Governing Law. The agreement shall be governed by and construed according to the laws of the State of California.

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

By 
Ann-Marie Gabel, Vice Chancellor, Business Services

ATEP FACILITIES CORPORATION

By 
Medhanie Ephrem, Facilities Corporation Secretary

APPENDIX A

See attached Bylaws.

**BYLAWS
OF
ATEP FACILITIES CORPORATION
a California Nonprofit Public Benefit Corporation**

**ARTICLE I
NAME AND OFFICES**

1.1 Name.

The name of this corporation is ATEP Facilities Corporation.

1.2 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.

1.3 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**

2.1 General Purposes.

This corporation is a nonprofit public benefit corporation organized under the Nonprofit Public Benefit Corporation Law for public purposes. This corporation is not organized for the private gain of any person.

2.2 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 provide assistance to the South Orange County Community College District (the "District") by operating, maintaining, and managing the Advanced Technology and Education Park project located in Tustin, California for the benefit of the District.

2.3 Dissolution.

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 District or as otherwise directed by the District.

**ARTICLE III
MEMBERSHIP**

3.1 Corporation Without Members.

This corporation shall have no members within the meaning of the Nonprofit Corporation Law and shall be governed solely by its board of directors. Pursuant to Section 5310(b) of the California Corporations Code (the "Code"), an action which would otherwise require approval by a majority of all members shall only require the approval of the board of directors.

**ARTICLE IV
BOARD OF DIRECTORS**

4.1 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 Executive Director of Fiscal Services, (ii) the District Vice Chancellor, Business Services, (iii) the president of Saddleback College, (iv) the president of Irvine Valley College, and (v) the Executive Director of Facilities Planning. Notwithstanding the foregoing, should there be a vacancy in the Directors because of removal, death, resignation or otherwise, the remaining Directors may elect to fill said vacancy by appointing an Interim Director. If and when the corresponding office is filled at the District by a new officer, the new officer shall automatically be appointed to the board of directors thereby replacing the Interim Director if one had been previously appointed.

4.2 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.

(4) Adopt, make, and use a corporate seal and alter the form of such seal.

4.3 Appointment; Election; Term.

Successors to the Directors shall assume the duties of a director effective immediately upon appointment to the respective District office identified in Section 4.1 of these bylaws and shall serve as a director during the full term of their employment unless they have resigned or been removed or their office has been declared vacant in the manner provided in these bylaws.

4.4 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.

4.5 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.

4.6 Removal of Directors.

Directors may only be removed if terminated for any reason from their office identified in Section 4.1 of these bylaws. Interim Directors may be removed without cause by a majority vote of the Directors then in office.

4.7 Restrictions 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 twelve (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.

4.8 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.

4.9 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.

4.10 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.

If an Interim Director 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 affirmative vote of a majority of the remaining 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.

4.11 Attendance at Meetings.

Directors shall be expected to attend all board meetings. After three (3) consecutive unexcused absences, the board chair 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.

4.12 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 ATEP Facilities Corporation and a board member.
- (b) Any contract between the ATEP Facilities Corporation 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 ATEP Facilities Corporation 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.

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 V MEETINGS OF THE BOARD OF DIRECTORS

5.1 General.

Notwithstanding any other provision in these bylaws to the contrary, all meetings of the board of directors shall be held in compliance with the requirements of the Ralph M. Brown Act (Gov. Code, §§ 54950, *et seq.*) (the "Government Code").

5.2 Place of Meetings.

Meetings of the board of directors shall be held at the principal office of this corporation unless another place is stated in the notice of the meeting, so long as the alternate location is within the boundaries of the District or otherwise in compliance with the Brown Act.

5.3 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. The annual meeting shall coincide with the first quarterly meeting.

5.4 Regular Meetings.

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 their 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, if any, 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."

5.5 Special Meetings.

Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairperson of the board, if any, the president, any vice president, the secretary, or a majority of directors in accordance with Section 54956 of the Government Code, to be held at such time and place as shall be designated in the notice of meeting.

5.6 Notice of Meeting.

- (a) Regular Meetings. Notice of all regular meetings of the board of directors shall be given at least seventy-two (72) hours before the regular meeting, and the board of directors shall post an

agenda which contains a brief description of each item of business to be transacted or discussed at the meeting. The agenda shall specify the time and place of the regular meeting, and shall be posted in a location that is freely accessible to the public. The agenda shall provide an opportunity for members of the public to directly address the board of directors on any item of interest to the public, before or during the board of directors' consideration of the item, that is within the subject matter jurisdiction of the board of directors.

(b) Special Meetings. Notice of all special meetings of the board of directors shall be given at least twenty-four (24) hours before the special meeting, and shall require delivery of written notice of the special meeting to each Director, and, to members of the media requesting notice in writing, at least twenty-four (24) hours before the time of the meeting. The notice shall specify the time and place of the special meeting and the business to be transacted or discussed, and shall be posted at least twenty-four (24) hours prior to the meeting in a location that is freely accessible to the public. The written notice may be dispensed with as to any director who, at or prior to the time the meeting convenes, files with the secretary a written waiver of notice or who is actually present at the meeting when it convenes. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

5.7 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 of directors, 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.

5.8 Adjournment and Notice of Adjourned Meeting.

Notwithstanding Section 5.7 of these bylaws, 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 twenty-four (24) hours. If the original meeting is adjourned for more than twenty-four (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.

5.9 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.

5.10 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.

**ARTICLE VI
OFFICERS**

6.1 Officers.

The officers of the corporation shall be a president, a secretary, and a chief financial officer. The District Vice Chancellor, Business Services shall serve as the president of the corporation, the Executive Director of Facilities Planning shall serve as the secretary, and the Executive Director of Fiscal Services shall serve as the chief financial officer. 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 6.3 of these bylaws. 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.

6.2 Election.

The officers of the corporation, except such officers as may be automatically appointed in accordance with Section 6.1 of these bylaws or as otherwise appointed in accordance with the provisions of Section 6.3 of these bylaws, shall be elected by the board of directors and may be selected from 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.

6.3 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.

6.4 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 of directors under Section 6.3 of these bylaws 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.

6.5 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.

6.6 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.

6.7 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 them 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. They shall preside, in the absence of the chairperson of the board or if there be none, at all meetings of the board of directors. They 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 their 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. They 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 their 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**

7.1 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 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 Code.

7.2 Approval of Indemnity.

On written request to the board by any person seeking indemnification under Section 5238(b) or Section 5238(c) of the Code, the board shall promptly determine under Section 5238(e) of the 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.

7.3 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.

7.4 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**

8.1 Maintenance of Corporate Records.

The board of directors 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.

8.2 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.

8.3 Annual Review or Audit

The board of directors shall cause an annual fiscal review or audit of the corporation to be conducted by an independent certified public accountant. This annual review or audit may, but need not, be conducted as part of a fiscal audit of the District. The annual review or audit will include a review of the internal control structure of the corporation. The auditors will also issue a separate report of findings, if there are findings noted during the review of internal control and performance of audit procedures. Such report will also include recommendations related to those findings. Copies of the annual review or audit report and management letter comments shall be submitted to the District within thirty (30) days after it is received by the corporation. The corporation shall annually publish the reviewed or audited statement of its financial condition. The statement shall be disseminated as widely as feasible and be available to any person on request and in accordance with the publication. A reasonable fee may be charged to cover the costs of providing such copies.

8.4 Annual Report.

The board of directors shall cause an annual report to be sent to directors within one hundred twenty (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.

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.

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.

8.5 Annual Statement of Certain Transactions and Indemnifications.

As part of the annual report to all directors in accordance with Section 8.4 of these bylaws, the board shall cause to be prepared and mailed or delivered therewith to each director a statement of any transaction or indemnification of the following kind:

(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) The names of any "interested persons" involved in such transactions, stating such person's relationship to the corporation, the nature of such person's interest in the transaction and, where practicable, the amount of such interest; provided, that in the case of a transaction with a partnership of which such person is a partner, only the interest of the partnership need be stated.

(c) 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 Code.

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

9.1 Checks, Drafts, 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.

9.2 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.

9.3 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.

9.4 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.

9.5 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**

10.1 Fiscal Year.

The fiscal year of the corporation shall end on June 30 in each year unless otherwise determined by resolution of the board of directors.

10.2 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.

10.3 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*".

10.4 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**

11.1 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 ATEP Facilities Corporation, a California nonprofit public benefit corporation.

2. The bylaws to which this certificate is attached, comprising fourteen (14) pages, constitute the bylaws of such corporation as duly adopted by the board of directors on March 1, 2022.

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: March 1, 2022

Secretary
Medhanie Ephrem

APPENDIX B

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 remaining monetary reimbursement required, if any	(E) *<u>\$XXX,XXX</u>

Intangible/Non-monetary reimbursement

Other added intangible benefits from Foundation efforts	(D) (XXX,XXX)
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>
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***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

Total Foundation Payments to/on behalf of the college, District, or 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 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

