



The Board of Governors of the California Community Colleges

PRESENTED TO THE BOARD OF GOVERNORS

DATE: July 20, 2015

SUBJECT: Revised Master Agreement by and between the Board of Governors of the California Community Colleges and the Foundation for California Community Colleges		Item Number: 1.2	
		Attachment: Yes	
CATEGORY:	Executive	TYPE OF BOARD CONSIDERATION:	
Recommended By:	 Vincent Stewart, Vice Chancellor	Consent/Routine	X
		First Reading	
Approved for Consideration:	 Brice W. Harris, Chancellor	Action	
		Information	

ISSUE: Updates to the Master Agreement between the Board of Governors and the Foundation for California Community Colleges, last updated in 2004, are recommended to address a variety of changes in operation practice, current law, and regulatory matters.

BACKGROUND: The Foundation for California Community Colleges is an auxiliary organization to the California Community Colleges Board of Governors (Board). The Foundation is authorized in the California Education Code for the purpose of providing supporting services and benefit to the California Community Colleges and the Board. The Master Agreement recognizes the Foundation as the system-wide auxiliary organization of the Board and outlines the terms under which the Chancellor’s Office, Board, and Foundation operate to fulfill roles and responsibilities.

RECOMMENDED ACTION: It is recommended that the Board of Governors approve the Revised Master Agreement between the Board of Governors and the Foundation for California Community Colleges.

ANALYSIS: Attached to this board item are two copies of the Revised Master Agreement. One copy detailed via red-line identifying all recommended edits. One copy depicting the final document assuming acceptance of all recommended changes. A number of updates to the Agreement are proposed, as summarized below.

1. Introductory paragraph – This section clarifies that this is a “revised” agreement and that it will be effective when signed by all parties and that this revised agreement replaces the previous version dated March 1, 2004.
2. Section I (Recognition of Auxiliary Organization) - No changes proposed.
3. Section II (Areas of Service) – This section adds “[...], but not limited to:” prior to listing the functions that Foundation performs for the Board because the list of activities set forth in this section is not exhaustive. Rather, Education Code section 72670.5(a) merely states that the Board may establish auxiliary organizations “for the purpose of providing supportive services and specialized programs for the general benefit of the mission of the California Community Colleges,” so adding the qualifier of “[...], but not limited to” allows for activities not currently listed in that section, so long as the purpose is consistent with the same set forth in Education Code section 72670.5(a).
4. Section III (Use of Personnel and Other Services) – This section includes minor wording clean-up, but no substantive changes. The Chancellor’s Office does not currently provide Personnel or Other Services to the Foundation; however, this provision remains in the Master Agreement to provide the parameters under which such arrangement could occur, if necessary, clearly stating that the arrangement shall be mutually agreed in writing by the Chancellor and President of the Foundation, and the Foundation shall reimburse the Chancellor’s Office for full costs incurred.
5. Section IV (Use of Facilities and Property) - This section includes minor wording clean up. In connection with the office move scheduled for later this year, the Foundation, in collaboration with the Chancellor’s Office, has entered into a separate/independent lease with the landlord and does not expect to sublet from the Chancellor’s Office following the move, therefore the original part “A” was removed in its entirety as inapplicable. Additionally, the Foundation is currently sub-letting space from the Chancellor’s Office under a separate MOU and the original part “B” (which now becomes part “A”) of this Section provides guidance for Foundation use of Chancellor’s Office space, further negating the need for the original part “A”.
6. Section V (Reimbursement for Personnel, Services, and Facilities) – This section includes updated language to reflect current law and practice. As stated above, the Chancellor’s Office does not currently provide Personnel or Other Services to the Foundation. Additionally, the Foundation is currently sub-letting from the Chancellor’s office for its Sacramento Office space under a separate MOU which will be discontinued upon the office move and related execution of separate leases with the landlord.

7. Section VI (Audit) – This section includes minor wording clean up, but no substantive change. The Foundation obtains an annual audit from an independent CPA firm and submits such report to the Board of Governors annually.
8. Section VII (Covenant) – No changes proposed.
9. Section VIII (Signs, Fixtures, and Equipment) – This section includes updated language to specify that the Chancellor and/or his/her designee has the authority to request the Foundation to remove Foundation-owned fixtures, signs or equipment in Chancellor’s Office facilities.
10. Section IX (Right of Entry) - No changes proposed.
11. Section X (Disposition of Earnings) – Changes to this section clarify that excess reserves and working capital would be used by the Foundation to benefit the Board and Chancellor’s Office within the Foundation’s Areas of Service described in Section II.
12. Section XI (Distribution of Assets Upon Cessation) – Changes to this section align with the Foundation’s Amended Articles of Incorporation and to satisfy rules imposed by the Foundation’s IRS 501(c)(3) tax exempt designation, rules describing an “instrumentality” of a state or political subdivision, California’s rules exempting certain corporations from state corporate income tax, and the California property tax welfare exemption.
13. Section XII (Expenditure of Funds) - No changes proposed.
14. Section XIII (Third Party Agreements by Foundation) - No changes proposed.
15. Section XIV (Insurance, Indemnification, and Restoration) – This section includes updated language to clarify that no personal liability under the Agreement be asserted against Chancellor’s Office, Board of Governors, Foundation Board of Directors, officers, agents, or employees, nor shall any recourse be had to any personal property or assets of the same, except as covered by required insurance.
16. Section XVII (Term of Agreement) - No changes proposed.
17. Section XVIII (Incorporation of Board Procedures) – No changes proposed.
18. Section XIX (Disputes) – No changes proposed.
19. Section XX (Meetings) – No changes proposed.
20. Section XXI (Notices) – No changes proposed.
21. Signature blocks – This section includes changes to update the agreement’s effective date, names of signors, and added date lines to the signature blocks.