

## NORTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT

**TO:** BOARD OF TRUSTEES

**DATE:** February 23, 2021

**SUBJECT:** NOCCCD, Fullerton College &  
Friends of Fullerton College  
Foundation Master Agreement

Action	<u>X</u>
Resolution	<u>          </u>
Information	<u>          </u>
Enclosure(s)	<u>X</u>

**BACKGROUND:** Fullerton College and the Friends of Fullerton College Foundation developed a Master Agreement to formalize the auxiliary foundation model similar to the relationship between Cypress College and the Cypress College Foundation.

The Master Agreement serves to formalize the relationship and cooperative activities between NOCCCD, Fullerton College & Friends of Fullerton College Foundation. The Master Agreement also reflects the work that will be done collaboratively between the Friends of Fullerton College Foundation and Fullerton College. The Board of Trustees approved the previous Master Agreement on October 27, 2020.

Recently the Cypress College Foundation and the North Orange County Community College District Foundation Master Agreements were updated for Board of Trustees approval. In order to maintain consistency with each of those Master Agreements with respect to the Business Practices and Audit and Insurance and Indemnification sections, the Friends of Fullerton College Foundation Master Agreement has been updated.

The updated Master Agreement has been reviewed and approved by the Friends of Fullerton College Foundation Board of Directors, the Chancellor and Vice Chancellor, as well as Fullerton College administration. In addition, this updated master agreement has been reviewed by legal counsel.

This agenda item is submitted by Dr. Greg Schulz, President, Fullerton College.

**How does this relate to the five District Strategic Directions?** This item responds to District Strategic Direction 4) Collective Impact & Partnerships: NOCCCD will develop and sustain collaborative projects and partnerships with educational institutions, community-based organizations, and businesses to create positive change in the region.

**How does this relate to Board Policy:** The agenda item relates to Board Policy 3600, Auxiliary Organizations.

**FUNDING SOURCE AND FINANCIAL IMPACT:** Funding in support of this updated master agreement was provided by the Friends of Fullerton College Foundation. There is no financial impact to NOCCCD, except as currently exists and as noted in the master agreement.

**RECOMMENDATION:** It is recommended that the Board approve the attached updated Master Agreement between NOCCCD, Fullerton College and the Friends of Fullerton College Foundation.

Fred Williams

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Recommended by

*Cheryl Marshall*

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Approved for Submittal

3.e.2

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Item No.

## **AGREEMENT**

BY AND BETWEEN THE  
NORTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT,  
FULLERTON COLLEGE AND  
THE FRIENDS OF FULLERTON COLLEGE FOUNDATION

This Agreement is made and entered into this day, 23 of February, 2021, by and between the North Orange County Community College District (the “NOCCCD”), Fullerton College (the “College”) and the Friends of Fullerton College Foundation, Inc., a California non-profit Corporation operated for the sole benefit of the College/NOCCCD, to formalize relationships and cooperative activities between the College/NOCCCD and the Friends of Fullerton College Foundation.

### **I. BACKGROUND AND PURPOSE**

WHEREAS, the Friends of Fullerton College Foundation is an Internal Revenue Code section 501(c)(3) public charity which exists solely for the purpose of supporting the College and its students and which has been recognized by the College/NOCCCD governing board as having a formal relationship with, and working on behalf of, the College/NOCCCD. By approving this Agreement, the College/NOCCCD affirms its recognition of the FRIENDS OF FULLERTON COLLEGE FOUNDATION as an auxiliary organization within the meaning of Section 72670-72680 of the California Education Code; and,

WHEREAS, the College offers a comprehensive array of educational and other services to students and to the community, and has done so continuously since 1913; and the Friends of Fullerton College Foundation was created in 2005 to administer funds bequeathed or donated for the educational benefit of students and former students of the College, including distribution of such funds for program and scholarship support, and to further the educational purposes of the College in other ways; and,

WHEREAS, the College/NOCCCD has found that the administration of fundraising, development and foundation funds management functions, is most efficiently performed by an Auxiliary, nonprofit entity such as the Friends of Fullerton College Foundation;

NOW THEREFORE, the NOCCCD Board of Trustees and the Friends of Fullerton College Foundation hereby enter into this Agreement defining the parameters of their relationship.

### **II. COMMITMENT OF THE FRIENDS OF FULLERTON COLLEGE FOUNDATION TO THE COLLEGE/NOCCCD**

- Proactively raise funds from businesses, associations, alumni and individuals to provide support for student financial aid, assist in raising funds for College Capital projects, seek donors to College academic programs, as well as College events
- Hold, apply, and prudently expend its income and assets so as to manage and operate the Friends of Fullerton College Foundation effectively for the exclusive benefit of the College and the

## NOCCCD

- Provide scholarships to Fullerton College students and continually raise funds to build an endowment which will provide permanent support for the College, its programs, and students
- Develop and operate an Alumni program to reach out and invite alumni to re-engage with Fullerton College
- Work with the College to support and enhance the Community Relations program of the College
- Manage and providing reporting for the Osher Program Scholarships
- Work with the Office of the President for the purpose of planning and coordinating the College's internal and external fund and friend raising activities

### **III. COMMITMENT OF THE COLLEGE/NOCCCD TO THE FRIENDS OF FULLERTON COLLEGE FOUNDATION**

- Salary and benefits and other types of funding support as agreed to by the Friends of Fullerton College Foundation and the College/NOCCCD as defined in Exhibit A
- Provide office space, technology support and College Bursar's Office support
- Provide the Friends of Fullerton College Foundation with access to database(s), public information support and assist with fund raising efforts
- Retain and pay for the annual audit of the Friends of Fullerton College Foundation
- Provide insurance coverage for the operation of the Friends of Fullerton College Foundation and its Board of Directors
- Provide legal and accounting support to the Friends of Fullerton College Foundation through making legal and accounting experts available to the foundation

### **IV. USE OF FACILITIES OR EQUIPMENT**

The Friends of Fullerton College Foundation, separately or jointly with the NOCCCD, may occupy, operate and use the College/NOCCCD facilities and property as identified in Exhibit B of this Agreement to accomplish the purposes of the Agreement and consistent with the policies, rules and regulations as adopted by the College and/or the NOCCCD. Appendix B sets forth the charge or rental to be paid to NOCCCD by the Friends of Fullerton College 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. The Friends of Fullerton College Foundation's use of NOCCCD facilities does not establish a landlord/tenant relationship between NOCCCD and the Friends of Fullerton College Foundation, unless such a relationship is otherwise established by a separate written agreement entered into between the NOCCCD and the Friends of Fullerton College Foundation.

The Friends of Fullerton College Foundation shall keep and maintain all utilized College facilities in a clean and orderly condition and shall, if required by the College, at its own expense at reasonably frequent

intervals and in a lawful manner, dispose of all extraordinary waste from the facilities. The College/NOCCCD agrees that it will keep the described facilities in good repair and will provide custodial services, internet connections, and telephone lines. The Friends of Fullerton College Foundation shall provide reimbursement to the District for such costs.

The right to use any of the College/NOCCCD facilities or equipment as provided in this Agreement shall cease upon termination of this Agreement or upon written notice of sixty (60) days to the Friends of Fullerton College Foundation by the College or the NOCCCD that the facilities are needed for the exclusive use of the College or the NOCCCD.

Upon termination of this Agreement or upon the termination of the Friends of Fullerton College Foundation right to use the College/NOCCCD facilities pursuant to this Agreement, the College/NOCCCD shall have the option to require the Friends of Fullerton College Foundation, at its own expense and risk, to restore the facilities as nearly as possible to the condition existing prior to the execution of the Agreement. If the Friends of Fullerton College Foundation shall fail to do so within sixty (60) days after the College/NOCCCD exercises said option in writing, the College/NOCCCD may restore the property at the expense of the Friends of Fullerton College Foundation, and all costs and expenses of such removal or restoration shall be paid by the Friends of Fullerton College Foundation upon demand of the College/NOCCCD. The College/NOCCCD shall have the right to exercise this option at any time up to thirty (30) days after the expiration of this Agreement, but not thereafter. The rights and obligations provided in this paragraph shall survive the termination of this Agreement.

During the term of this Agreement, the Friends of Fullerton College Foundation shall have the right to place and attach fixtures, signs, furniture, and equipment in or upon facilities as authorized in writing by the College President as to number, site, and location. Fixtures, signs, or equipment so erected, placed or attached by the Friends of Fullerton College Foundation shall be and remain the properties of the Friends of Fullerton College Foundation, and shall be removed by the Friends of Fullerton College Foundation upon the termination of this Agreement or when directed by the College President in writing.

## **V. IDENTITY**

The College/NOCCCD grants the Friends of Fullerton College Foundation the use of College name and logo during the term of this Agreement for so long as the Friends of Fullerton College Foundation remains in good standing with the College/NOCCCD and abides by the terms set forth in this Agreement. Such right to use the College name and logo shall terminate on the termination of this Agreement.

## **VI. ACCESS**

It is understood and agreed that at any time the College/NOCCCD's officers, employees, and agents shall have the right to enter the described facility; however, a mandate that no such person shall have the right to remove anything of a personal or confidential nature shall be strictly enforced by the College/NOCCCD and the Friends of Fullerton College Foundation, except as may be required by law.

## **VII. ALIGNMENT OF INTERESTS**

The Friends of Fullerton College Foundation Board of Directors shall include the President of the College, as an ex-officio voting member; the President of the Faculty Senate or their designee as an ex-officio voting member, the President of the Classified Senate or their designee as an ex-officio, voting member and an appointed member of the North Orange County Board of Trustees as an ex-officio voting member. The Friends of Fullerton College Foundation Bylaws shall include language requiring such appointments to the

Friends of Fullerton College Foundation Board of Directors.

The communication between the Friends of Fullerton College Foundation and the College/NOCCCD shall be delegated to the Executive Director of the Friends of Fullerton College Foundation and the College President and, if the NOCCCD so desires, the Chancellor of the NOCCCD, who shall meet at a mutually acceptable time, as they determine, to review and prioritize the planned and current activities of the Friends of Fullerton College Foundation, as well as explore, discuss, recommend and review programs and activities involving both organizations, as are then appropriate. A system of formal communication between the Executive Director and the College President will be developed to ensure that the College and the NOCCCD is fully informed of activities between the Friends of Fullerton College Foundation and the College and that these activities are clearly communicated and well-coordinated between the College/NOCCCD administration, departments, faculty, committees, and programs such that the College President is fully aware of and can support the Friends of Fullerton College Foundation' activities.

To further insure the communication between the Friends of Fullerton College Foundation and the College/NOCCCD, the Executive Director, Foundation and Community Relations shall directly report to the College President and shall work directly with the Friends of Fullerton College Foundation Board of Directors. The President will conduct an annual performance review of the Executive Director of the Friends of Fullerton College Foundation in accordance with District policies with input from the Friends of Fullerton College Foundation Board of Directors.

The College will make available to the Friends of Fullerton College Foundation the annual planning document that outlines the College's priority needs for the coming year and will assist with promoting the Friends of Fullerton College Foundation programs and highlighting achievements for the mutual benefit of the Friends of Fullerton College Foundation and the College.

The NOCCCD Chancellor or College President shall have the right to cause the Friends of Fullerton College Foundation to cease any activity deemed, in her or his judgment, to be contrary to the best interests of the College or inconsistent with the policies or purposes of the College/NOCCCD.

The Friends of Fullerton College Foundation shall take the lead role in helping the College/NOCCCD create an environment conducive to increasing levels of private support for the College/NOCCCD mission and priorities.

## **VIII. COVENANT**

During the term of this Agreement, the Friends of Fullerton College Foundation agrees to maintain its existence and to operate in accordance with state and federal laws governing nonprofit organizations, and with the College/NOCCCD policies. The Friends of Fullerton College Foundation Bylaws will be in support of the policies, rules, and regulations of both the mission and program goals of the College and the NOCCCD and with State and Federal laws and regulations.

## **IX. PROPRIETARY AND CONFIDENTIAL MATERIAL AND INFORMATION**

The Friends of Fullerton College Foundation acknowledges that the College/NOCCCD possesses and shall continue to possess a wide variety of proprietary and confidential materials and information. Such materials and information may appear in tangible or intangible forms, and may include but are not limited to trade secrets, inventions, documents, writings, papers, records, data, publication, apparatus, equipment, property, improvements, products, hardware, software, processes, formulae, concepts, know-how, studies, and reports. The Friends of Fullerton College Foundation agrees that such materials and information shall be

the sole and exclusive property of the College/NOCCCD and shall be used in strict confidence. The Friends of Fullerton College Foundation shall not disclose, sell, or use such materials and information unless specifically authorized by this Agreement or in writing by the College President or the NOCCCD Chancellor. Upon termination of this Agreement or upon written notice by the College/NOCCCD, the Friends of Fullerton College Foundation shall return all such materials and information to the College/NOCCCD. Thereafter, the Friends of Fullerton College Foundation shall forever refrain from using or disclosing such materials and information for any purpose whatsoever without consent from the College/NOCCCD. The rights and obligations provided in this paragraph shall survive the termination of this Agreement.

From time to time the Friends of Fullerton College Foundation Board may, in open or closed session, discuss private, confidential or sensitive matters, including, without limitation, candidates for office, potential donors, specialized grants, restricted donation limitations, testamentary requirement, and the like. This information is considered essential in order for the Friends of Fullerton College Foundation to fulfill its fiduciary obligations to donors. As a material part of the Agreement, the College/NOCCCD agrees that such information is strictly confidential and shall not be disclosed to, or discussed with, any other person or entity by any person who is employed by, or serves in any office or capacity for, the NOCCCD, without the prior written consent of the Friends of Fullerton College Foundation Board, so long as said disclosure is not required by law or necessary to comply with the terms of this Agreement or NOCCCD policy.

#### **X. BUSINESS PRACTICES AND AUDIT**

The Friends of Fullerton College Foundation recognizes that all of its activities, programs, publicity and news releases, and similar actions could result in diminished public esteem and injury to the College; therefore, in addition to obtaining an annual independent audit to be conducted by a certified public accountant (CPA), the Friends of Fullerton College Foundation shall adopt and implement all appropriate generally accepted business practices as applied by enterprises of size and scope similar to the Friends of Fullerton College Foundation. The auditor report and auditor communication shall be reviewed by the Foundation Board of Directors prior to submission of the audit report to the NOCCCD Board of Trustees. The annual audit shall be submitted to the NOCCCD within thirty (30) days after it is received by the Friends of Fullerton College Foundation. Friends of Fullerton College shall annually publish the audited statement of their financial condition which shall be disseminated as widely as feasible and be available to any person on request.

The independent CPA firm retained to audit the NOCCCD may also audit the Friends of Fullerton College Foundation and the costs of those additional services shall be paid by the NOCCCD. Should the Friends of Fullerton College Foundation choose to select its own independent CPA firm, it may do so and pay from its own operating funds.

The Friends of Fullerton College 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 shall cover all activities of the Friends of Fullerton College Foundation whether pursuant to this Agreement or otherwise. The College/NOCCCD shall have the right to inspect and audit such records and accounts during and/or following the close of any Foundation fiscal year following reasonable notification to the Friends of Fullerton College Foundation. The NOCCCD shall also have the right to take custody of all records generated by the Friends of Fullerton College Foundation in any way relating to the administration of the Friends of Fullerton College Foundation services, programs, functions or activities described in this Agreement. The rights and obligations provided in this Section shall survive the termination of this Agreement.



The Friends of Fullerton College Foundation will hold regular meetings of the Board of Directors at least quarterly and provide written notice to each member at least (10) days before the day of such meetings as specified in the Friends of Fullerton College Foundation Bylaws.

The Friends of Fullerton College Foundation Executive Director will submit an annual Schedule of Commensurate Return to the College President's Office for the NOCCCD Board of Trustees highlighting the total funds raised along with other benefits and services the Friends of Fullerton College Foundation has provided to the College concurrent with the submission of the audited financial report.

The Friends of Fullerton College Foundation shall prepare an annual budget of its revenues and expenses and shall submit such budget to the Friends of Fullerton College Foundation' Board of Directors and to the College President prior to the commencement of each fiscal year, for approval by the Friends of Fullerton College Foundation' Board of Directors.

## **XI. APPLICATION OF FRIENDS OF FULLERTON COLLEGE FOUNDATION FUNDS**

To ensure good stewardship and to fulfill the fiduciary responsibilities of the Friends of Fullerton College Foundation regarding endowment and other gifts, the Friends of Fullerton College Foundation will establish and will follow legal, customary, and generally accepted policies and procedures for the acceptance, management and investment of such gifts. Earnings in excess of operating costs, appropriate provision for equipment acquisition and replacement, and quasi-endowment and working capital and reserves, shall be used for the benefit of students and former students of the College, and for other activities and programs of the College, as determined by the Friends of Fullerton College Foundation with the concurrence of the Friends of Fullerton College Foundation Board of Directors. All activities and programs that benefit the goals and objectives of various educational programs of the College in the near term and in the long term will be determined by mutual agreement between the College President and the Friends of Fullerton College Foundation.

## **XII. INSURANCE AND INDEMNIFICATION**

The Friends of Fullerton College Foundation shall be included in the NOCCCD's insurance policies for all of its regular functions, including Directors' and Officers' liability insurance. When special events are sponsored by the Friends of Fullerton College Foundation, separate insurance coverage shall be required by the NOCCCD. The Friends of Fullerton College Foundation may at any time retain its own Directors and Officers or other necessary insurance policies at its own expense.

Upon termination of this Agreement, or upon the termination of the Friends of Fullerton College Foundation's right to use the NOCCCD facilities pursuant to this Agreement, NOCCCD shall have the option to require Friends of Fullerton College Foundation, at the Friends of Fullerton College Foundation's own expense and risk, to restore the facilities as nearly as possible to the condition existing prior to the execution of the Agreement. If the Friends of Fullerton College Foundation shall fail to do so within sixty (60) days after the NOCCCD exercises the option, NOCCCD may restore the property at the expense of Friends of Fullerton College Foundation and all costs and expenses of such removal or restoration shall be paid by Friends of Fullerton College Foundation upon the demand of NOCCCD. NOCCCD shall have the right to exercise this option within thirty (30) days after the expiration of this Agreement, but not thereafter. The rights and obligations provided in this paragraph shall survive the termination of this Agreement.

Each party agrees to indemnify, defend, and save harmless the other party and its officers, agents and employees from any and all loss, damage, liability or expense (including but not limited to reasonable attorney's fees and court costs) that may be suffered or incurred by the other party, its officers, agents and



employees arising in connection with this Agreement, or in any way connected with the use of the District or the College facilities by the Foundation, to the extent that the loss, damage, or liability arises from the intentional or negligent acts or omissions of the indemnifying party, its officers, agents or employees or its breach of this Agreement. If the indemnified party, or its officers, agents, or employees, engaged in intentional or negligent acts or omissions or a breach of this Agreement that contributed to said loss, damage or liability, then the parties' respective responsibility shall be determined in accordance with principles of comparative fault. The rights and obligations provided in this paragraph shall survive the termination of this Agreement.

### **XIII. PUBLIC RELATIONS**

The Friends of Fullerton College Foundation will support and enhance the public relations efforts of the College specifically in working with the business community. With respect to expenditures for public relations or other purposes which would serve to augment the College/NOCCCD appropriations for the operation of the College, the Friends of Fullerton College Foundation may expend funds in such amount and for such purposes as are approved by the College.

### **XIV. DISPOSITION OF EARNINGS**

Net earnings derived from the operations of the Friends of Fullerton College Foundation shall be used solely to benefit the College/NOCCCD and its students or used for reserves as established by the Board of Directors of the Friends of Fullerton College Foundation.

### **XV. ATTORNEY AND ACCOUNTANT SERVICES**

The Board of Directors of the Friends of Fullerton College Foundation shall have the benefit of the advice and counsel of at least one attorney admitted to practice law in California and at least one licensed certified public accountant. Neither the attorney nor the certified public accountant need to be members of the Board of Directors of the Friends of Fullerton College Foundation.

### **XVI. INDIRECT COSTS**

If the Friends of Fullerton College Foundation of Fullerton College administers federally-sponsored or other programs in which indirect costs to the College/NOCCCD will be incurred, it shall gain the approval of the College/NOCCCD in advance of accepting such funds and agree to reimburse the College/NOCCCD for the indirect costs. Such reimbursement will take into consideration the NOCCCD's federal indirect cost rate and the approved indirect cost allocation, if any, of the program award. All such reimbursements shall be made by the Friends of Fullerton College Foundation within thirty (30) days of receipt of an invoice with a determination of such costs.

### **XVII. DISTRIBUTION OF ASSETS UPON CESSATION**

The property of the Friends of Fullerton College Foundation is irrevocably dedicated to the charitable purpose, as set forth in its governing documents, of supporting the College/NOCCCD and its students and former students, and upon the liquidation or dissolution of the Friends of Fullerton College Foundation, upon the abandonment of its property, or upon the cessation of the Friends of Fullerton College Foundation operations under this Agreement (which shall include, but shall not be limited to, any termination of this Agreement), this property will not inure to the benefit of any private person, but rather it will be distributed to either: (1) the College/NOCCCD; or (2) one or more nonprofit funds, foundations, or corporations that

are designated by the College and which are organized and operated exclusively for public educational purposes and that have established tax exempt status under Section 501(c)(3) and Section 509 of the Internal Revenue Code (or any successor provision), and that will assure that all received property shall be reserved for the exclusive use and benefit of the College and its students and former students.

Through the years the Friends of Fullerton College has and will accept funds from donors in the form of scholarship endowments. These funds are commonly known and accounted for as "Permanently Restricted Funds." In the event of a liquidation or dissolution of the Friends of Fullerton College Foundation, the successor organization will continue to maintain and manage these "Permanently Restricted Funds" as scholarship endowments in perpetuity. Additionally, the Friends of Fullerton College Foundation manages "Title V" funds which are "Temporarily Restricted Funds." These funds, including any earnings, dividends, interest, etc. will convert to "Permanently Restricted Funds" of the Foundation or the successor organization at the end of the holding period (Year 2023) and also be treated as scholarship endowments in perpetuity.

### **XVIII. THIRD PARTIES**

Neither party shall enter into any contract that would obligate the other party or its facilities, equipment or personnel without the prior written approval of the other party. There are no intended third-party beneficiaries of this Agreement.

### **XIX. SEVERABILITY**

If any one or more of the provisions of this Agreement is held to be invalid, illegal, or unenforceable, then such provisions shall be deemed severed from the Agreement, and the remaining provisions of the Agreement shall continue in full force and effect and shall not be affected, impaired, or invalidated in any way.

### **XX. SECTION HEADINGS**

The various section headings in the Agreement shall be used solely for the Parties' convenience and shall not affect the meaning, construction, or effect thereof.

### **XXI. TERM OF AGREEMENT**

The term of this Agreement shall be five (5) years beginning on the date of this Agreement, unless sooner terminated as herein provided; however, that this Agreement shall be extended upon mutual agreement automatically for subsequent annual periods of five (5) years unless either party notifies the other party in writing not later than sixty 60 days prior to a renewal date of its intention not to renew. The Parties to this Agreement agree to meet and review this Agreement yearly. In any event of termination, the provisions of Section XVII of this Agreement (concerning the distribution of assets upon dissolution) shall survive such termination.

### **XXII. EFFECT 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 XIV. Upon termination of this Agreement, the Friends of Fullerton College Foundation shall within thirty (30) days of such termination: (1) vacate any of the College/NOCCCD facilities and/or real property the Friends of Fullerton College Foundation is occupying; (2) return all of

the College/NOCCCD equipment and supplies to the College/NOCCCD; (3) transfer all documents and records in its possession relating to its administration of the services, programs, functions or activities described in this Agreement to the College/NOCCCD; (4) discontinue its use of the College name and logo; (5) distribute all assets of the Friends of Fullerton College Foundation in accordance with Article XVII, and (6) perform all other obligations required of the Friends of Fullerton College Foundation under the terms of this Agreement.

### **XXIII. GOVERNING LAW AND VENUE**

This Agreement shall be executed, delivered, construed, and enforced in accordance with the laws of the State of California. Proper venue for legal action regarding this Agreement shall be situated in Orange County, California.

### **XXIX. CONSTRUCTION**

In the event of dispute, both Parties shall be deemed to have drafted this Agreement. No portion of this Agreement shall be constructed for or against either Party based on the drafter or the Agreement. Unless otherwise specified, references in this Agreement to notice or acts to be performed by the College shall be deemed to require the approval of or notice from the College President or acting College President (or his or her designee) as endorsed by the NOCCCD governing board, or the District Chancellor as may be applicable, and references to notice or acts to be performed by the Friends of Fullerton College Foundation shall be deemed to require the approval of or notice from the Friends of Fullerton College Foundation Executive Director, or his or her designee, as endorsed by the Friends of Fullerton College Foundation Board of Directors.

### **XXV. NON-ASSIGNABILITY**

This Agreement is not assignable by the Friends of Fullerton College Foundation or the College/NOCCCD in whole or in part, nor shall the Friends of Fullerton College Foundation permit anyone else to use the facilities assigned to the Friends of Fullerton College Foundation or any part thereof without written permission of the College/NOCCCD.

### **XXVI. LEGAL AUTHORITY**

This Agreement is made pursuant to Section 59257 of Title 5 of the California Code of Regulations and Section 72670-72690 of the Education Code.

### **XXVII. LEGAL COMPLIANCE**

The Friends of Fullerton College Foundation agree to operate in compliance with the NOCCCD policy and regulations, and with provisions of law pertaining to auxiliary organizations of community college districts, sections 72670-72690 et seq. of the Education Code and sections 59250 et seq. of Title 5 of the California Code of Regulations.

### **XXVIII. REAL PROPERTY**

The Friends of Fullerton College Foundation shall not enter into any transaction concerning real property without the prior approval of the NOCCCD Board of Trustees.

### **XXIX. REIMBURSEMENT FOR SERVICES AND FACILITIES**

Reimbursement to the College by the Friends of Fullerton College Foundation for facilities or services shall be in the form of agreed-upon levels of reimbursement for staff and other operating expenses, and in the form of non-monetary or intangible benefits that are agreed upon by the College and the Friends of Fullerton College Foundation.

This arrangement is in keeping with the March 13, 1998, Attorney General' s Opinion (No.97-1105), which included this observation: "Because the duties and purpose of an auxiliary organization are to benefit a community college district and contribute to its educational mission, no issue of a 'gift of public funds' (Cal Const. Art. XVI, section 6) is present when district employees perform services for the organization."

The Friends of Fullerton College Foundation may provide services to the College for which the College would reimburse the Friends of Fullerton College Foundation. The Friends of Fullerton College Foundation is responsible for funding its operation other than in those areas the College agrees to.

### **XXX. NOTICES**

All notices required to be given, or that may be given, by either party to the other, shall be in writing and shall be deemed to have been fully given when delivered if delivered personally or three (3) days after mailing if sent by mail, postage prepaid, to the other party as follows.

Notice to the Friends of Fullerton College Foundation shall be directed as follows:

President, Board of Directors, Friends of Fullerton College Foundation  
Executive Director, Friends of Fullerton College Foundation  
321 E. Chapman Avenue  
Fullerton, CA 92832-2095

Notice to the NOCCCD and Fullerton College shall be directed as follows:

President, Fullerton College  
321 E. Chapman Avenue  
Fullerton, CA 92832-2095

Chancellor, North Orange County Community College District  
1830 W. Romneya Drive  
Anaheim, CA 92801-1819

### **XXXI. SUPERSEDURE AND AUTHORIZATION**

This Agreement supersedes all prior agreements between the College and the Friends of Fullerton College Foundation with respect to its subject matter. This Agreement may be amended only by a fully executed written agreement of the parties. The individuals whose signatures appear below certify that this Agreement has been approved by their respective governing boards and has received all approvals required under California law.

**SIGNATURE PAGE FOLLOWS THIS PAGE**

IN WITNESS WHEREOF, this Agreement, when executed by the parties, is effective as of the date written above.

NORTH ORANGE COUNTY  
COMMUNITY COLLEGE DISTRICT

By \_\_\_\_\_  
Dr. Cheryl Marshall, Chancellor

Date \_\_\_\_\_

By \_\_\_\_\_  
NOCCCD Board of Trustees

Date \_\_\_\_\_

FULLERTON COLLEGE

By \_\_\_\_\_  
Dr. Greg Schulz, President

Date \_\_\_\_\_

FRIENDS OF FULLERTON COLLEGE FOUNDATION

By \_\_\_\_\_  
Board President

Date \_\_\_\_\_

## **EXHIBIT A**

- Salary and benefits and other types of funding support as agreed to by the Friends of Fullerton College Foundation and the College/NOCCCD
  - The Friends of Fullerton College Foundation Executive Director's salary and benefits shall be fully reimbursed to the College/NOCCCD by the Friends of Fullerton College Foundation under this Agreement. At least sixty percent (60%) of such reimbursement shall be in the form of monetary reimbursement.
  - The Friends of Fullerton College Foundation Administrative Assistant III's salary and benefits shall be fully reimbursed to the College/NOCCCD by the Friends of Fullerton College Foundation under this Agreement. At least sixty percent (60%) of such reimbursement shall be in the form of monetary reimbursement.
  - Additional employees may be added to the Friends of Fullerton College Foundation on an individual basis as agreed to by the College/NOCCCD and the Friends of Fullerton College Foundation and at monetary reimbursement rates jointly determined. However, such monetary reimbursement shall not be at a rate of less than fifty percent (50%).

## **DISTRICT EMPLOYEES**

As of the effective date of this Agreement, there are no District employees assigned to the Friends of Fullerton College Foundation; however, in consideration of the Friends of Fullerton College Foundation being recognized as an auxiliary organization of the College/NOCCCD, the College intends to hire and allow for the partial non-monetary reimbursement of the salaries and benefits for the following two positions:

- Job Title: Executive Director, College Foundation and Community Relations
- Job Title: Administrative Assistant III

The College/NOCCCD shall assign employees from the College/NOCCCD to devote work time to the Friends of Fullerton College Foundation the amount and nature of which shall be determined by the College/NOCCCD in consultation with the Friends of Fullerton College Foundation Board of Directors. Such employees shall at all times be employees of the College/NOCCCD only, and will be subject to and governed by the NOCCCD's regular policies and procedures. The College/NOCCCD shall retain exclusive authority with respect to all employment issues concerning such employees, including but not limited to, as applicable, renewal and negotiation of employment agreements, right of assignment, salary and wages, benefits, discipline and termination (subject to any applicable collective bargaining or meet and confer agreement). Notwithstanding the foregoing, the Friends of Fullerton College Foundation, may evaluate and provide input into employment decisions by the College/NOCCCD with respect to the College/NOCCCD employees assigned to the Friends of Fullerton College Foundation. The Friends of Fullerton College Foundation shall fully reimburse the College/NOCCCD for the salary and benefits for these College/NOCCCD employees, with at least fifty percent (50%) of such reimbursement being in the form of nonmonetary benefits.

**EXHIBIT B****College/NOCCCD Supplied Facilities****Office Space**

The Friends of Fullerton College Foundation will be provided with adequate working/office space, including computers and printers, for all staff working for the Friends of Fullerton College Foundation as well as a small reception area for students and visitors.

Indoor storage space for filing cabinets, supplies, tables, chairs, pop-up tents, archives and marketing materials will also be provided. The rental value to be paid for such facilities shall be \$1.00 per year.