

AMENDED AND RESTATED BYLAWS OF THE OHLONE COLLEGE FOUNDATION

ARTICLE I - PURPOSE OF THE FOUNDATION

Section 1. Purpose: The Ohlone College Foundation supports Ohlone College (the “College”) in execution of its strategic plan and provides assistance to the College, its programs and the students through fund raising and community outreach programs.

ARTICLE II – STATUS

Section 1. Principal Office: The principal office of the corporation in the State of California shall be located within the Ohlone Community College District at such place as may be designated from time to time by the board of directors of the corporation (the “Board”).

Section 2. Status: The Ohlone College Foundation is a nonprofit public benefit corporation organized under the California Nonprofit Corporation Law for public and charitable purposes, and has been granted tax exempt status by the Internal Revenue Service as a 501(c)(3) organization.

Section 3. Auxiliary Organization: The Ohlone College Foundation shall be an auxiliary organization of the Ohlone Community College District subject to the regulations of said District as adopted for auxiliary organizations and to the master agreement by and between said District and this corporation. Should there be any conflict between these Bylaws and any later amendments thereto and said regulations and master agreement, said regulations and master agreement shall prevail. The corporation shall also be subject to those provisions of the California Education Code and California Code of Regulations applicable to auxiliary organizations.

ARTICLE III – MEMBERS

Section 1. Members: The Corporation shall have no members. Any action, which would otherwise require approval by a majority of all members or approval by the members, shall require approval of the Board. All rights, which would otherwise vest in the members, shall vest in the directors.

Section 2. Associates: Nothing in these Bylaws shall be constructed as limiting the right of the corporation to refer to persons associated with it as “members” even though such persons are not members, and no such reference shall constitute anyone a member within the meaning of Section 5056 of the California Nonprofit Corporation Law. The Board may, by resolution, establish categories of persons associated with the corporation and set the qualifications therefore. Persons meeting the qualifications of such categories may be referred to as “Regular Members”, “Sustaining or Auxiliary Members”, “Patrons”, “Friends” or any other title provided by the Board, but no such designation shall confer upon any person the right to vote for the election of directors, or on the disposition of substantially all of the assets of the corporation, or on a merger, or on a dissolution, or on changes to the corporation’s articles or bylaws, or any

other rights which may be conferred on “members” of a public benefit corporation under the California Nonprofit Corporation Law commencing with Section 5000 et. seq. of the California Corporations Code, nor shall any such designation confer upon any person the status of a member within the meaning of Corporations Code Section 5056. Notwithstanding the creation of categories of individuals associated with the corporation, including but not limited to ex officio members, the corporation shall not have non-voting members of its board of directors.

ARTICLE IV – DIRECTORS

Section 1. Powers: Subject to the limitation of the Articles and these Bylaws, the activities and affairs of the corporation shall be conducted and all corporate powers shall be executed by or under the direction of the Board. The Board may delegate the management of the activities of the corporation to any of its committees, offices, or agents 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.

Section 2. Number of Directors: The authorized number of voting directors shall be not less than 10 or more than 30 until changed by the amendment of these Bylaws, with the exact number determined by resolution of the Board.

Section 3. Selection and Term of Office: Directors other than ex-officio voting directors shall be selected as provided below, and their term of office shall commence at an annual meeting of the Board for a period of 1 to 3 years with the exact term of years as specified at such time as the director is ratified to office. Each director shall serve until the later of (a) the end of his or her term, or (b) until such date as his or her successor is elected or appointed or the Board determines that, as a result of a reduction in the authorized number of directors, said director’s position on the Board shall not continue after the end of his or her term of office. Board members may also be selected as vacancies occur or by special circumstance on majority approval of the Board.

- a. The President of the College shall serve ex-officio as a voting member of the Board the duration of his or her office.
- b. The members of the Board who are also members of the Board of Trustees of the Ohlone Community College District shall be no more than two. The chair of the Board of Trustees shall annually appoint a minimum of two Trustees to serve as ex officio directors of the corporation.
- c. The directors, their number to be determined by resolution of the Board within the limits specified in Section 2 of this Article IV, shall be elected by the vote of the directors in office immediately before the election. Each elected director shall take office upon election and shall hold the office for 1 to 3 years with the exact term of office as specified by the Board. Notwithstanding this or any other provisions, however, the terms of the elected voting directors shall be fixed by the Board in a manner that will provide for the expiration each year of the terms of approximately one-third of the elected directors.

- d. In addition to the required number of voting directors, there may be such number of ex-officio members as the Board may determine is advisable, representing the College and the administration of the College, to include, but not be limited to the following:
- i. the Executive Director of the corporation;
 - ii. the Vice President of Administrative Services of the Ohlone College;
 - iii. the Vice President of Academic Affairs of Ohlone College;
 - iv. a member of the Ohlone College student body, as appointed by the Associated Student Body President

Said ex-officio/honorary members shall be voting directors and shall act as advisors and render their assistance in the decisions and implementation of the decisions of the Board of this corporation. Such voting ex-officio/honorary directors shall be appointed by majority vote of the Board for such terms as the Board shall determine from time to time.

Section 4. Vacancies: Subject to the provisions of the California Nonprofit Corporation Law, any director may resign by giving written notice to the Chairperson, the Secretary, or the full Board and such resignation shall be effective upon receipt of such written notice unless the notice specifies a later time for the effectiveness of such resignation. Notwithstanding the above, except on notice to the California Attorney General, no voting director may resign if the corporation would be left without a duly elected voting director or directors. If the resignation is effective at a future time, a successor may be selected before such time to take office when the resignation becomes effective.

A vacancy in the Board because of removal, death, resignation or otherwise shall be filled in the same manner as the director whose office is vacant was selected, provided that the vacancies be filled by a majority of the remaining directors, even though less than a quorum, or by a sole remaining director. Each director so selected shall hold office until the expiration of the term of the replaced director. Any person selected to fill a vacancy on the Board shall have the same qualifications as were required of the director whose position was vacated; provided, however, that if the President of Ohlone College vacates his or her position, the person selected by the Trustees of the Ohlone Community College District as acting President shall fill the vacancy until a new President is appointed.

Any director other than the President of Ohlone College may be removed from office with or without cause by the vote of three-fourths of those voting at a meeting called for that purpose at which a quorum is present.

Any director who fails to attend three consecutive Board meetings will automatically be removed from the Board without the need for a Board resolution removing the director unless: (1) the director requests a leave of absence for a limited period of time and the leave is approved by the Board, or (2) the director suffers from an illness or disability which prevents him or her from attending meetings and the Board by resolution waives the automatic removal procedure of this section for such director during all or a portion of the term of his or her illness or disability. The

Board may, by resolution, agree to reinstate any director who has been automatically removed as a result of missing three meetings.

Section 5. Restriction on Interested Persons as Directors. Notwithstanding any other provision of this Article, no more than forty-nine percent (49%) of the persons serving on the Board may be interested persons. An interested person is (a) any person compensated by the corporation for services rendered to it within the previous 12 months, whether as a full-time or part-time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a director as director; and (b) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of such person. However, any violation of the provisions of this paragraph shall not affect the validity or enforceability of any transaction entered into by the corporation.

ARTICLE V – MEETINGS

Section 1. Place: Meetings of the Board shall be held at any place within the geographical limits of the Cities of Fremont or Newark that has been designated from time to time by the Board. In the absence of such designation, meetings shall be held at the principal office of the corporation.

Section 2. Quorum: A minimum of one-third of voting directors entitled to vote constitutes a quorum for the transaction of business.

Section 3. Annual and Regular Meeting: The Board shall hold an annual meeting for the purpose of organization, election of directors and officers, review of annual report and annual financial statement, and the transaction of other business. The meetings of the Board may be set by the Board. Annual meetings shall be held each year at such time and place as may be fixed by the Board. There shall be in addition, regular Board meetings at least quarterly on such dates and at such times as may be fixed by the Board, upon recommendation of the Executive Director.

Section 4. Notice of Meetings: The annual meeting and each regular meeting shall be held upon seven days notice given personally, or by mail, or by telephone, email, fax, or other similar means of communication. Notices of all meetings shall be given in strict compliance with the California Government Code sections 54950 et. seq. (the “Brown Act”). Written notice shall also be given by mail to any resident of Ohlone Community College District who requests such notice in the manner specified by Government Code Section 54954.1.

Section 5. Special Meetings and Notice for Special Meetings: Special meetings of the Board may be called at any time by the Chairperson, College President, any Vice Chairperson of the board, the Executive Director, Board Secretary, or any two directors. Written notice shall also be given in accordance with the Brown Act and these Bylaws.

Section 6. Open Meetings: All meetings of the Board shall be open and public and all persons shall be permitted to attend any meeting of the Board; 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 the Brown Act.

Section 7. Conduct of Meetings: Robert's Rules of Order, Newly Revised, shall govern the conduct of all meetings of the Board.

ARTICLE VI – OFFICERS

Section 1. Designation: The officers of the corporation shall be a Chairperson who shall also serve as President of the corporation, a Vice Chairperson, a Secretary, and a Treasurer. The corporation may also have at the discretion of the Board, one or more other vice chairpersons, one or more assistant secretary-treasurers, and such other offices as may be elected or appointed in accordance with the provisions of this Article VI. In addition to these offices, there shall be a position of legal counsel and members at large.

Section 2. Election: The officers of the corporation, except such officers as may be elected or appointed in accordance with the provisions of Section 3 or Section 5 of this Article, shall be chosen annually by, and shall serve at the pleasure of, the Board. The officers shall hold their respective offices until their resignation, removal, or other disqualification from service or until their respective successors shall be elected.

Section 3. Subordinate Officers: The Board may elect, and may empower the Chairperson to appoint, such other officers as the business of the corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as provided in these Bylaws or as the Board may from time to time determine.

Section 4. Removal and Resignation: Any officer may be removed at any time, either with or without cause, by the Board or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal has been conferred by the Board. Any officer may resign at any time by giving written notice to the Board. Any such resignation shall take effect at the date of receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Vacancies: 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 election or appointment to such office, provided that such vacancies shall be filled as they occur and not on an annual basis.

Section 6. Chairperson: The Chairperson shall preside at all meetings of the Board. The Chairperson has the general powers and duties of management usually vested in the office of president and general manager of a corporation and such other powers and duties as may be prescribed by the Board. These day to day powers and duties may be delegated to the Executive Director of the corporation.

Section 7. Vice Chairperson: In the absence or disability of the Chairperson, the Vice Chairperson if any are appointed, in order of their rank as fixed by the Board or if not ranked, the Vice Chairperson designated by the Board shall perform all the duties of the Chairperson. When so acting, the Vice Chairperson shall have all the powers of and be subject to all the restrictions upon the Chairperson. The Vice Chairperson shall have such powers and perform such other duties as from time to time may be prescribed for them respectively by the Board.

Section 8. Secretary: The Secretary or his/her designee shall keep or cause to be kept at the principal office or such other place as the Board may order a book of minutes of all meetings of the Board and its committees, with the time and place of holding, whether regular or special, the notice thereof given, the names of those present, and the proceedings thereof. The Secretary shall keep or cause to be kept at the principal office in the State of California in the original or a copy of the corporation's Articles and Bylaws as amended to date. The Secretary shall give or cause to be given notice of all meetings of the Board and any committees thereof required by these Bylaws or by law to be given and shall keep the seal of the corporation in safe custody.

Section 9. Treasurer: The Treasurer is the chief financial officer of the corporation and the Treasurer or his or her designee shall keep and maintain or cause to be kept and maintained adequate and correct accounts of the properties and business transactions of the corporation. The books of account shall at all times be open to inspection by any voting director.

The Treasurer shall deposit or cause to be deposited all monies and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the Board. The Treasurer shall work with Foundation and District staff to disburse the funds of the corporation as may be ordered by the Board, shall render to the Chairperson and the directors, whenever they request it. The Treasurer shall work with Foundation and District staff to provide an account of all transactions as Treasurer and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws. The Treasurer shall work with Foundation and District staff to submit such annual reports to the Board as required by law or as directed by the Board. In performing these functions, the Treasurer shall follow the directions of the Foundation Board and of the District and shall at all times act in compliance with the terms of these bylaws and the Master Agreement.

Section 10. Executive Director: The President of the College may appoint an Executive Director, who shall be responsible for administrative operations of the corporation.

Section 11. Professional Advisors: The Board of Directors shall select an attorney admitted to practice in the State of California and a licensed certified public accountant to provide advice and counsel to the Board of Directors. Each shall have experience appropriate to the responsibility and shall have no financial interest in any contract or other transaction entered into by the Board which he/she serves. Neither the attorney nor the certified public accountant needs to be a member of the Board of Directors, but may be. If such professional advisors are compensated a retainer agreement setting forth the terms of such engagement must be approved by resolution of the Board and must be just and reasonable as to the Foundation at the time it is entered into.

ARTICLE VII – COMMITTEES

Section 1. Committees: The Executive Director may create one or more committees, the purpose of which will be to provide advice and direction to the Executive Director and district/foundation staff and/or to execute special corporation events.

ARTICLE VIII – CONTRACTS, CHECKS, DEPOSITS AND FUNDS

Section 1. Contracts. The Board, except as the Bylaws otherwise provide, may authorize any officer or officers, agent or agents, of the corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances. All expenditures are subject to the approval of the College President and the Board. Approval may be signified by resolution, approval of specific programs, or approval of the annual budget.

Section 2 . Checks, Drafts, Evidence of Indebtedness. All checks, drafts, or orders over \$500 for the payment of money, notes, or other evidences of indebtedness issued in the name of the corporation shall be signed by no fewer than two officers and/or agents of the corporation in such manner as shall from time to time be determined by resolution of the Board. In the absence of such determination by the Board, such instruments shall be signed by the Treasurer and the Chairperson. The Board may also authorize the president of the College and the Executive Director of the corporation to co-sign checks, deposits, or other payments.

Section 3 . Deposits. All money and other valuables of the corporation shall be deposited to the credit of the corporation with such banks, trust companies, or other depositories as the Board may from time to time designate.

Section 4 . Gifts. The Board may accept on behalf of the corporation any contribution, gift, bequest, or devise for the general purposes or for any specific purpose of the corporation consistent with District Policy and the Master Agreement.

Section 5. Annual Audit; Fiscal Year. The Board shall, or may designate the Executive Director to work with district staff to provide for an annual audit of the records and accounts of the corporation. The audit shall coincide with the district's regular fiscal audit . The fiscal year of the corporation shall begin on the first day of July and end on the last day of June in each year.

Section 6. Program and Budget. The Board shall approve a proposed program and annual budget of the Foundation for the following fiscal year for review by the President of the College in sufficient time to be included in the tentative budget of the College to be presented and approved by its Board of Trustees prior to the beginning of its fiscal year in July of each year.

Section 7. Gifts and Grants. The Board may accept any contribution, gift, grant or bequest in accordance with an established Gift Receipt and Acceptance Policy and Procedure to be adopted by the Board.

Section 8. Indirect Cost Payments. If the Foundation administers a federally-sponsored program, funds derived from indirect cost payments shall only be appropriated with the specific

approval of the President of the College. All uses of such funds shall be regularly reported to the College Board of Trustees.

ARTICLE IX – INDEMNIFICATION

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

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

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

Section 4. Insurance. The Board shall have the right to authorize and direct the officers of the corporation to cause the corporation to purchase and maintain insurance to the full extent permitted by law on behalf of its officers, directors, employees, and other agents, against any liability asserted against or incurred by any officer, director, employee, or agent in such capacity or arising out of the officer’s, director’s, employee’s, or agent’s status as such. The insurance maintained under this Section will be provided by and through the College. The College will provide notice to the Corporation of any additional insurance requirements – including but not limited to special event coverage as appropriate.

ARTICLE X – SEAL

Section 1. Corporate Seal. The corporation shall have a corporate seal, which will be in the form of a circle having in its circumference the words “OHLONE COLLEGE FOUNDATION” and within the circle the date of incorporation.

ARTICLE XI – AMENDMENTS

Section 1. Amendment to Bylaws. These Bylaws may be amended, repealed, or added to, or new Bylaws may be adopted, at any meeting of the Board at which a quorum is present by the affirmative vote of a majority of the directors voting; provided, however, that notice of any proposed amendment, repeal, or addition, including a draft thereof, shall be given at the Board meeting immediately preceding the meeting at which such amendment is voted upon. Once notice of a proposed amendment, repeal, or addition has been given pursuant to this Section, the Board may adopt the proposed amendment, repeal, or addition, reject it, or adopt it in an amended form.

Section 2. Required Approval by District. Notwithstanding the above, any proposed amendment to (a) Article I, Section 1 and/or Article IV, Section 3(a) and (b) of these Bylaws, or to (b) Article V of the Articles of Incorporation of this corporation must be approved by the President/Superintendent of the Ohlone Community College District.

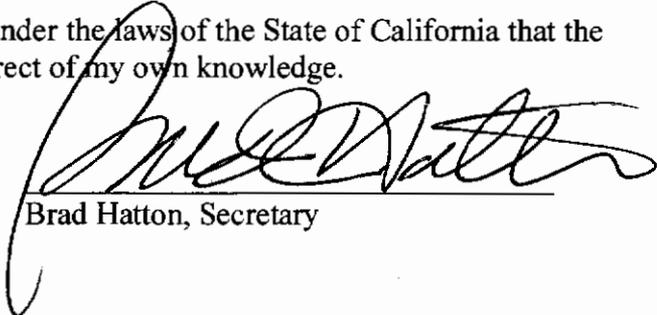
CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify that:

1. I am the duly elected and acting secretary of OHLONE COLLEGE FOUNDATION, a California nonprofit public benefit corporation.
2. The Bylaws to which this certificate is attached, comprising 9 pages, constitute the bylaws of such corporation as duly adopted by the board of directors of this corporation at a meeting of such board on December 2, 2015.

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: December 2, 2015


Brad Hatton, Secretary