

**AMENDED AND RESTATED MASTER AGREEMENT  
BY AND BETWEEN  
OHLONE COMMUNITY COLLEGE DISTRICT  
AND  
OHLONE COLLEGE FOUNDATION**

This Amended and Restated Master Agreement (the “Agreement”) is made and entered into this first day of July 2014 by and between the Ohlone Community College District, hereinafter referred to as “District,” and Ohlone College Foundation, hereinafter referred to as “Foundation,” an auxiliary organization established and operated as an integral part of the District.

**ARTICLE I**

**PURPOSE**

Section 1.1 Purpose. The Ohlone College Foundation is a non-profit public benefit corporation and supports Ohlone College in execution of its strategic plan. The Foundation provides assistance to the College, its programs and students through fundraising and community outreach programs. Administration by Foundation of the functions and activities described herein, instead of administration by and through the District, is deemed to be more effective in accomplishing these functions and activities than would be possible under usual governmental budgetary, purchasing, and other fiscal procedures.

**ARTICLE II**

**AREAS OF SERVICE AND FUNCTIONS**

Section 2.1 Functions. The Foundation will be providing services and performing the function of receiving gifts, bequests, endowments, trusts and in-kind donations for the benefit and advancement of the District, including but not limited to funding scholarships for current and prospective students at the District, and providing financial support for other programs, as so designated by the College. The conduct of all services, activities and functions of the foundation including, but not limited to, Foundation fiscal procedures and operations, shall be subject to the District’s oversight and control and shall be conducted in compliance with District rules and regulations and such directions as may be provided from time to time. The Foundation may administer only those functions or activities defined in Section 59259 of Title 5 of the California Code of Regulations (the “Title 5 Regulations”). Other services, programs, functions or activities may be provided if first approved by the Board of Governors of the California Community Colleges and the Board of Trustees of the District.

## ARTICLE III

### USE OF FACILITIES

Section 3.1 District Facilities. The Foundation may occupy, operate, and use the District facilities and property which may be identified in Appendix A to this Agreement. Appendix A may be amended from time to time by mutual agreement of the District and the Foundation. The Foundation's operations under any such amendment shall be integrated with District's operations and shall be under the general supervision of District officials. Furthermore, it is understood and agreed that District officers, employees and agents shall have the right to enter any such facilities or any part thereof at any time for the purpose of examination or supervision. The Foundation's use of District facilities does not establish a landlord/tenant relationship between the District and the Foundation, unless such a relationship is otherwise established by a separate written agreement entered into between the District and the Foundation.

Section 3.2 Charge or Rental. The College will provide at no cost to the Foundation certain facilities-related services. These include office space, telephones, utilities, custodial and facilities maintenance services.

Section 3.3 Use of Facilities. The Foundation shall use the facilities and property listed in Appendix A only for those services and functions that are consistent with this Agreement and 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 Foundation's right to use any of the District facilities or property included in this Agreement shall cease upon written notice by the President/Superintendent of the District that the facilities are needed for the exclusive use of the District.

Section 3.5 Maintenance and Operating Expenses. If applicable and outlined in Appendix A, the College may require the Foundation to keep and maintain all such facilities and property in a clean and orderly condition and may require, at its own expense, at reasonably frequent intervals and in a lawful manner, dispose of all waste from the facilities. The College will provide at no cost to the Foundation certain facilities-related services. These include office space, telephones, utilities, custodial and facilities maintenance services.

Section 3.6 Signs, Fixtures and Equipment. During the term of this Agreement, the Foundation shall have the right to erect, place and attach fixtures, signs and equipment in or upon facilities as authorized by the President/Superintendent or appropriate District personnel. Fixtures, signs or equipment so erected, placed or attached by the Foundation shall be and shall remain the property of the Foundation and shall be removed therefrom by the Foundation upon the termination of this Agreement or on the written direction of the President/Superintendent of the District. Fixtures, signs or equipment erected, placed

or attached by the District shall remain the property of the District.

Section 3.7 Restoration. Upon termination of this Agreement, the District may require the Foundation, at the Foundation's expense and risk, to restore all such facilities as nearly as possible to the condition existing prior to the execution of this Agreement; provided, however, that if the Foundation shall fail to do so within ninety (90) days after the District exercises such option, the District may restore the property at the expense of the Foundation; and all costs and expenses of such restoration shall be paid by the Foundation upon demand of the District. The District shall have the right to exercise this option within thirty (30) days after the expiration of this Agreement, but not thereafter.

Section 3.8 Survival of Rights. The rights and obligations provided in this Article shall survive the termination of this Agreement.

#### **ARTICLE IV**

#### **ADDITIONAL AUTHORITY AND RESPONSIBILITIES OF AUXILIARY ORGANIZATION**

Section 4.1 Restriction on Courses with State Funding. The Foundation shall not offer courses for which State funding is received.

Section 4.2 Services of Foundation. All services, programs and activities that may be undertaken by Foundation shall be maintained for the general benefit of the District.

Section 4.3 Donations. The President/Superintendent of the District and the Foundation's Executive Board shall decide, after consulting with a donor, whether the donor's in-kind proposed gift to the District should be accepted by the District or referred to the Foundation.

Section 4.4 Scholarships, Student Aid. Student awards, scholarships, stipends, and grant-in-aid shall only be given to current, incoming, or transfer students of the District. A record of such financial assistance shall be forwarded on a timely basis to the campus financial aid office and shall be documented on student financial aid recipient records kept in that office. All such financial assistance provided from Foundation funds shall be approved by the campus financial aid office before such funds are expended, and shall not exceed amounts to be provided under regulations of federal and state financial aid programs.

## ARTICLE V

### ANNUAL AUDITS AND PROFESSIONAL SERVICES

Section 5.1 Attorney and Accountant Services. The board of directors of the Foundation shall engage at least one attorney admitted to practice law in California and at least one licensed certified public accountant to provide advice and counsel, as needed, on legal and financial matters. Neither the attorney nor the certified public accountant need be members of the board of directors of the Foundation and can be staff or consultants provided by the District

Section 5.2 Annual Audit. The board of directors of the Foundation shall cause an annual fiscal audit of the Foundation to be conducted by a certified public accountant. This annual audit shall be conducted as part of the regular fiscal audit of the District and a *pro rata* share of the audit expense shall be borne by the Foundation. The annual audit will include a review of the internal control structure and a report of recommendations. Copies of the annual audit report and management letter comments shall be submitted to the District Board of Trustees and Board of Governors' office within thirty (30) days after it is received by the Foundation. The Foundation shall annually publish the audited 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 5.3 Annual Budget. The Foundation shall also prepare for the District an annual budget of its revenues and expenses. This report shall be provided to the District no later than June 30 of each year and shall be included with the District's Final Budget presentation to the Board of Trustees in September of each year.

Section 5.4 Foundation Records. The Foundation and/or District 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 this Agreement. Such records and reports shall cover all activities of the Foundation whether pursuant to this Agreement or otherwise. The District shall have the right to inspect and audit such records and accounts during and/or following the close of any Foundation fiscal year following reasonable notification to the Foundation. The District shall also have the right to take custody of all records generated by the Foundation in any way relating to its administration of the services, programs, functions or activities described in this Agreement. The rights and obligations provided in this Section shall survive the termination of this Agreement.

Section 5.5 Annual Statement of Benefits. The Foundation shall provide the District with an annual statement describing the benefits and services of the Foundation to the District. This report shall be presented to the Board of

Trustees of the District no later than 120 days following the close of the Foundation's fiscal year or upon reasonable receipt of the District's fiscal year summary.

## **ARTICLE VI**

### **REIMBURSEMENT FOR SERVICES AND FACILITIES**

Section 6.1 Reimbursement for Services of District Employees. The Foundation shall provide full reimbursement to the District, annually, for services performed by District employees on behalf of the Foundation (listed in Appendix B of this agreement). No less than 50% of said reimbursement shall be provided to the District as *direct general fund offsets*, in the form of donations and/or cash. The balance of services costs may be reimbursed in the form of in-kind contributions or non-monetary benefits provided by the Foundation to the District, as authorized by California Attorney General Opinion 81 Ops. Atty. Gen. 111 (1998).

The Foundation shall provide to the District quarterly a Statement of Contributions that accounts for all direct general fund offsets, in-kind donations, or benefits reimbursements during that period.

Section 6.2 Reimbursement for District Expenditures. In addition to the reimbursement provided under section 6.1, the District may require the Foundation to reimburse the District for other expenditures incurred by the District as a result of the Foundation's activities. Such services shall be mutually agreed upon by the District and Foundation in writing in advance. The Foundation may provide reimbursement under this section by making monetary reimbursements or by providing a statement of the in-kind contribution or benefits provided to the District by the Foundation, as authorized by California Attorney General Opinion 81 Ops. Atty. Gen. 111 (1998)

## **ARTICLE VII**

### **COVENANT TO MAINTAIN EXISTENCE**

Section 7.1 Covenant to Maintain Existence. During the term of this agreement, Foundation agrees to maintain its existence and to operate in accordance with Sections 72670- 72682 of the California Education Code and with the regulations of Sections 59250-59276 of the California Code of Regulations, Title 5, as well as with District policy and the implementing regulations for auxiliary organizations adopted by the District.

## **ARTICLE VIII**

### **INDIRECT COSTS**

Section 8.1 Indirect Costs Relating to Federal Programs. If the Foundation administers a federally-sponsored program, it shall reimburse the District for indirect costs associated with the performance of services by the District for the Foundation relating to the federally-sponsored project. Such reimbursement will take into consideration the District's federal indirect cost rate and the approved indirect cost allocation, if any, of the federal program award. All such reimbursements shall be made by the Foundation within thirty (30) days of receipt of an invoice with a determination of such costs. The President/Superintendent may waive this requirement upon request of the Foundation.

## **ARTICLE IX**

### **DISPENSATION OF EARNINGS**

Section 9.1 Dispensation of Earnings. Income generated by Foundation in excess of costs and provisions for equipment, maintenance, reserves, and working capital shall be used to benefit the District. Capital provisions shall be established by the Board of Directors of Foundation to insure fulfillment by the Foundation of this covenant.

Section 9.2 Disposition of Assets. Upon dissolution of the Foundation or the cessation of its operations under this Agreement, its assets remaining after payment, or provisions for payment, of all debts and liabilities shall be distributed to either (i) such organization organized and operated exclusively for public and charitable purposes, which has established its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or (ii) a state or political subdivision of a state of the United States to be used exclusively for public purposes. That organization shall be the District or its designee if it qualifies as such under this Section 9.2.

## **ARTICLE X**

### **PUBLIC RELATIONS**

Section 10.1 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, Foundation may expend funds in such amount and for such purposes as are approved by the Board of Directors of Foundation. Foundation shall file with the District President/Superintendent a statement of its policy on accumulation and use of public relations funds. The statement will 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.

## **ARTICLE XI**

### **THIRD PARTY AGREEMENTS BY FOUNDATION**

Section 11.1 Third Party Agreements. Foundation shall not enter into any contract that would obligate designated District facilities, equipment, or personnel.

## **ARTICLE XII**

### **INSURANCE, INDEMNIFICATION, AND RESTORATION**

Section 12.1 Insurance. Foundation shall be included in the District's insurance policies for all of its regular functions, including directors liability insurance. When special events are sponsored by Foundation, separate insurance coverage may be required by the District.

## **ARTICLE XIII**

### **REAL PROPERTY**

Section 13.1 Real Property Transactions. Foundation shall not enter into any transaction concerning real property without the prior approval of the President/Superintendent of the District following his/her notification of the District Board of Trustees of such proposed transaction.

## **ARTICLE XIV**

### **MISCELLANEOUS**

Section 14.1 Non-Assignability; Amendment. This Agreement is not assignable by Foundation, either in whole or in part, nor shall Foundation permit anyone else to use the described facilities or any part thereof. This Agreement may not be amended or modified except by a writing signed by the parties.

Section 14.2 Term. This Agreement is for the term beginning on the first day of February 2013 and ending on the first day of February 2018 unless sooner terminated as herein provided.

Section 14.3 Termination. This Agreement may be terminated by either party by giving sixty (60) days written notice, subject to the provisions of this Agreement entitled Disposition of Assets.

Section 14.4 Termination in Event of Loss of Auxiliary Good Standing Status. If and when the President/Superintendent or other designee of the District has reason to believe that the Foundation should be removed from the District's list of auxiliary organizations which are in good standing (the "Good Standing List"), that person shall give the Foundation's board of directors reasonable notice that a conference will be held to determine whether grounds for removal of the Foundation from the Good Standing List do in fact exist. Representatives of the Foundation's board of directors shall be entitled to be present at such conference and to be heard. Based upon such conference, the President/Superintendent or such other District designee shall recommend to the District Board of Trustees whether the Foundation should be removed from the Good Standing List, after which the District Board of Trustees, in its sole discretion, may remove the Foundation from said Good Standing List. Notwithstanding anything in this Agreement to the contrary, this Agreement shall immediately terminate on the Foundation's removal from the Good Standing List. In the event that the Foundation is removed from the Good Standing List, the Foundation shall promptly wind up its affairs and dissolve.

Section 14.5 Effects of Termination. Upon termination of this Agreement, neither party shall have any further obligation hereunder except for (1) obligations occurring prior to the date of such termination; and (2) obligations, promises, or covenants contained herein which expressly extend beyond the term of this Agreement, including but not limited to those set forth in this Section. Upon termination or expiration of this Agreement, the Foundation shall within thirty (30) days of such termination or expiration (1) vacate any District facilities and/or real property the Foundation is occupying; (2) return all District equipment and supplies to the District; (3) transfer all documents and records in its possession relating to its administration of the services, programs, functions or activities described in this Agreement to the District; and (4) perform all other obligations required of the Foundation under the terms of this Agreement.

Section 14.6 Notices. All notices herein required to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and received by Foundation or the President/Superintendent. Notice to Foundation shall be addressed as follows:

Chairperson/President (Chair) of the corporation  
Ohlone College Foundation  
43600 Mission Boulevard  
Fremont, CA 94539



Notice to the District shall be addressed as follows:

President/Superintendent  
Ohlone Community College District  
43600 Mission Boulevard  
Fremont, CA 94539

Section 14.7 Governing Law. This 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 first above written.

OHLONE COMMUNITY COLLEGE DISTRICT

By: *Gari Browning*  
Gari Browning, President/Superintendent

OHLONE COLLEGE FOUNDATION

By: *R. Sharma*  
*Rakesh Sharma* President

**APPENDIX A**  
**TO**  
**MASTER AGREEMENT**

**Facilities:** Suites 1141 and 1142 of Fremont Campus

**APPENDIX B**  
**TO**  
**MASTER AGREEMENT**

<b>Employees:</b>	Foundation Director	1.0 FTE
	Executive Assistant	1.0 FTE
	Specialist	1.0 FTE
	Accountant/ Business Services	0.3 FTE