

Memorandum of Understanding

Between

Victor Valley Community College District

And

Victor Valley Community College District Foundation, Inc.

This Memorandum of Understanding (hereinafter referred to as the "MOU"), made this day of _____, 2018, between the Victor Valley College Foundation (hereinafter referred to as "FOUNDATION") and the Victor Valley Community College District (hereinafter referred to as "DISTRICT") (hereinafter collectively referred to as the "Parties" and individually referred to as "Party") for the purpose of developing resources to support college programs.

RECITALS

Whereas, the DISTRICT is a California Community College District organized under the California Education Code serving the educational needs of the residents and businesses located within its district boundaries; and,

Whereas, the DISTRICT operates Victor Valley College in Victorville, California and the Victor Valley College Public Safety Training Center in Apple Valley, California; and,

Whereas, the DISTRICT recognizes the need to develop alternative resources through grants, charitable programs, and fundraising; and,

Whereas, the FOUNDATION has expertise in providing resource development services to the benefit of the DISTRICT in each of the aforementioned areas; and,

Whereas, the FOUNDATION desires to provide services in these areas and the DISTRICT likewise wishes for the FOUNDATION to continue providing services as provided in this MOU; and,

Whereas, the FOUNDATION is an independent 501(c) (3) corporation organized under the Nonprofit Public Benefit Corporation Law (Cal. Corp. Code, §§ 5110-6815) and is established for the sole benefit of the DISTRICT in July 1975.

THEREFORE, the Parties agree to the following provisions:

1. PURPOSE

- 1.1. The purpose of this MOU is to permit the FOUNDATION to serve as the agent for the DISTRICT with regard to marketing, acquisition and management of certain resource development activities including grant solicitation and charitable giving programs, subject to the limitations of authority herein described and policies adopted by the DISTRICT Board of Trustees.

2. TERM

- 2.1. The term of this MOU shall be for a period of two and one-half years or 30 months commencing on July 1, 2018 and ending on December 31, 2020. This MOU may be renewed for an unlimited number of successive three year terms provided all parties so agree in writing 90 days prior to the expiration date of the MOU. The parties recognize that the prior MOUs have been three years and that the Master Agreement is set to expire on December 31, 2020. The Master Agreement is set to automatically renew for twenty five (25) years. The parties have agreed for the betterment of DISTRICT and the FOUNDATION to coordinate the termination date of the MOU and review all of the provisions for a new Master Agreement beginning six months (July 1, 2020) prior to the expiration date of the Master Agreement. The intent is for the Parties to enter a new Master Agreement effective January 1, 2021, without the need of renewing or entering a new MOU.
- 2.2. The Parties hereby amend the Master Agreement to reflect that the Master Agreement as referenced in paragraph 10 (of the June 11, 1997 Master Agreement) can be terminated without cause upon ninety (90) days' written notice to the other Party.

3. RESPONSIBILITIES OF PARTIES AND SCOPE OF AGREEMENT

- 3.1. The FOUNDATION will perform the following:

3.1.1. GRANT MANAGEMENT

- 3.1.1.1. FOUNDATION will present all grant proposals to the Superintendent/President's Cabinet for approval prior to working directly with college staff, faculty, departments or division.
- 3.1.1.2. FOUNDATION will identify and recommend grant opportunities from any and all sources that will benefit the DISTRICT mission.
- 3.1.1.3. Upon approval by the DISTRICT, FOUNDATION will develop and prepare grant proposals, negotiate partnerships as needed to facilitate projects in these proposals and coordinate submission of grant proposal on behalf of the DISTRICT.
- 3.1.1.4. FOUNDATION will coordinate approvals required for all grant agreements.
- 3.1.1.5. FOUNDATION will provide orientation to DISTRICT personnel who will be involved in implementing grant provisions.

3.1.2. GENERAL OPERATIONS

- 3.1.2.1. FOUNDATION will coordinate and direct charitable giving and social enterprise programs for the DISTRICT including annual

fund, alumni giving, planned giving, corporate and individual major gifts, employee giving and fundraising events.

- 3.1.2.2. FOUNDATION will participate in development of DISTRICT procedures related to the development and implementation of grants and charitable giving programs.
- 3.1.2.3. FOUNDATION will employ and manage its own staff to fulfill the terms of this agreement. (The addition of any new employee positions requires approval from the DISTRICT, excluding the Chancellor's Office Deputy Sector Navigator position).
- 3.1.2.4. FOUNDATION shall to the fullest extent permitted by law, defend, indemnify and hold harmless DISTRICT for any claims made concerning GENERAL OPERATIONS by any acts, omissions, or conduct by the FOUNDATION as cited in this section.
- 3.1.2.5. FOUNDATION will provide an annual report of activities to the DISTRICT.
- 3.1.2.6. The FOUNDATION shall provide the DISTRICT with copies of, and shall keep records and accounts of its program expenditures pursuant to its budgets for the prescribed period of law, and shall maintain its previous years' financial statements on file with the DISTRICT.
- 3.1.2.7. An independent CPA firm will be retained annually to audit the FOUNDATION each fiscal year with the costs of that service paid by the FOUNDATION. Such audit reports shall be supplied to the DISTRICT within 30 days following their completion. The DISTRICT shall also supply the FOUNDATION with the relevant portions of its annual audit reports to the FOUNDATION within 30 days following their completion.

3.1.3. SCHOLARSHIP MANAGEMENT

- 3.1.3.1. FOUNDATION will solicit and secure resources for scholarships to help support the DISTRICT's mission and goal of promoting student success.
- 3.1.3.2. FOUNDATION will develop and execute a comprehensive marketing plan for community and on-campus outreach to increase the number of scholarship donors and applicants.
- 3.1.3.3. FOUNDATION will serve as the scholarship liaison with the DISTRICT's Financial Aid and Bursar offices. Utilize the

DISTRICT'S Datatel software to record student scholarship receipts and enter awards in student aid screens.

- 3.2. The DISTRICT will perform the following:
- 3.2.1. Provide access to DISTRICT systems necessary for the FOUNDATION to carry out the terms of this MOU including purchasing
 - 3.2.2. DISTRICT will provide use of DISTRICT furniture and computer workstations as required by FOUNDATION for carrying out the terms of this MOU.
 - 3.2.3. DISTRICT will provide payroll and benefit services for all FOUNDATION employees, per employee contracts.
 - 3.2.4. DISTRICT will allow the FOUNDATION to occupy, operate, and use DISTRICT property and services, either separately or jointly with the College, as from time to time agreed upon by the DISTRICT and the FOUNDATION. The use of such property or services must be used in accordance with all policies, rules, and regulations adopted by the DISTRICT Board of Trustees. The DISTRICT shall have the right to enter and inspect all DISTRICT facilities used by the FOUNDATION.
 - 3.2.5. In accordance with Civic Center Act (Education Code § 82542), the FOUNDATION may occupy, operate and use such DISTRICT facilities as are mutually identified as appropriate and are consistent with the policies, rules, and regulations which have been or may be adopted by the DISTRICT Board of Trustees.
 - 3.2.6. The DISTRICT has determined a location within DISTRICT facilities that is mutually identified as appropriate for use by the FOUNDATION. The agreed location that the FOUNDATION occupies is eight hundred eighty (880) square feet. The DISTRICT has determined that the monthly rate to be charged to the FOUNDATION for use of the space is \$.56 a square foot. The rent is to be paid in Cash or In Kind as detailed in section 5.3 or 5.4 of this MOU. The rental rate of \$.56 a square foot is less than the fair rental value of the space. The Governing Board of the DISTRICT has determined that the FOUNDATION is recognized as having a formal relationship with, and working on behalf of and for the sole benefit of the DISTRICT and in existence before August 31, 1980, and therefore supports the basis for charging rent at a reduced rate.
 - 3.2.7. The FOUNDATION shall defend, indemnify and hold harmless DISTRICT for any acts, omissions, or conduct by the FOUNDATION within the workplace, employment contracts or benefits for FOUNDATION employees. In the event an administrative agency, provider, benefit administrator, the DISTRICT or court determines that the FOUNDATION employee is ineligible for any benefits provided by the DISTRICT to its management or classified employees, the benefit shall be severed from this

MOU without affecting the validity of the remaining provisions of this MOU.

4. LIMITS OF AUTHORITY

- 4.1. Under this MOU, the DISTRICT may deny any grant or contract, proposed or secured by the FOUNDATION recommendation for grant proposals.
- 4.2. The DISTRICT's approval of any grant agreement or contract secured by the FOUNDATION will obligate the DISTRICT to perform the provisions of the award. The FOUNDATION assumes no liability for the DISTRICT's failure to perform under the terms of grants and contracts secured through this partnership.

5. FINANCIAL CONSIDERATIONS

- 5.1. The DISTRICT may charge the FOUNDATION for its use and occupancy of DISTRICT facilities in connection with the performance of its functions. The DISTRICT shall provide the FOUNDATION with at least 90 days written notice prior to the end of any fiscal year if the DISTRICT decides to charge the FOUNDATION for the use of DISTRICT facilities for the upcoming fiscal year.
- 5.2. The DISTRICT agrees to carry an accounts receivable for FOUNDATION staff salaries and benefits for up to 30 months or Dec. 31, 2020, and for the calculated value of facilities, technology and furnishings used by the FOUNDATION. The FOUNDATION agrees to be responsible for repaying this obligation in cash or in kind.
- 5.3. The DISTRICT agrees to accept as repayment (Cash)
 - 5.3.1. Dollar value of in-direct Costs awarded with grants. Private and Corporate Grants with no In-Direct, will be counted dollar for dollar.
 - 5.3.2. Dollar value of equipment purchased for the DISTRICT through grant funds for the District.
 - 5.3.3. Cash contributions turned over to the DISTRICT. Those cash contributions will show as total Expenditures Made from Cash Donations on behalf of College Departments and Clubs on FOUNDATIONS quarterly report to Trustees.
 - 5.3.4. Annual cash contributions to the President's Excellence Fund.
- 5.4. The DISTRICT agrees to accept as repayment (In-Kind)
 - 5.4.1. Value of equipment purchased for or donated and approved for acceptance by the DISTRICT.
 - 5.4.2. Quid pro quo donations that directly support/benefit the DISTRICT. Example: The value of advertising time donated by a radio or television

station.

5.4.3. All in-kind gifts that are approved by the DISTRICT.

5.5. Recognizing that the Foundation is an independent organization which engages in activities beyond the scope of this agreement, the following will not be applied to the calculation of in-kind proceeds for the purpose of repayment of accrued FOUNDATION salaries:

5.5.1. Charitable donations that are used to establish endowments within the FOUNDATION, unless they qualify as a CASH REPAYMENT above. (Proceeds from these endowments may be counted when they are distributed and if they meet one of the criteria in paragraph 5.3)

5.5.2. Endowment for the purposes of student scholarships. (Proceeds from these endowments will be counted when they are distributed to the Bursar's office or to the Bookstore.)

5.5.3. Non-cash assets held in ownership by the FOUNDATION. (Proceeds from these assets may be applied when they are distributed for the benefit of the DISTRICT programs if they meet of the of criteria in paragraph 5.4.3)

5.6. The DISTRICT agrees to accept:

5.6.1. The FOUNDATION's Executive Director's full salary and benefits reimbursement through in-kind match. The FOUNDATION shall defend, indemnify and hold harmless DISTRICT for any acts, omissions, or conduct by the FOUNDATION within the workplace, employment contracts or benefits for the Executive Director. In the event an administrative agency, provider, benefit administrator, the DISTRICT or court determines that the FOUNDATION employee is ineligible for any benefits provided by the DISTRICT to its management or classified employees, the benefit shall be severed from this MOU without affecting the validity of the remaining provisions of this MOU.

5.6.2. One-half of all other FOUNDATION employee's salary and benefits through in-kind match, with the remaining half to be reimbursed annually in cash. The FOUNDATION shall defend, indemnify and hold harmless DISTRICT for any acts, omissions, or conduct by the FOUNDATION within the workplace, employment contracts or benefits for FOUNDATION employees. In the event an administrative agency, provider, benefit administrator, the DISTRICT or court determines that the FOUNDATION employee is ineligible for any benefits provided by the DISTRICT to its management or classified employees, the benefit shall be severed from this MOU without affecting the validity of the remaining provisions of this MOU.

5.6.3. The District administration shall develop a procedure for applying these proceeds to credit the FOUNDATION account in accordance with this

MOU. The DISTRICT shall invoice the FOUNDATION for expenditures made by it for the benefit of the FOUNDATION, indicating the items charged and the method of determining costs. The DISTRICT shall provide certain services, without invoice, to the FOUNDATION, as from time to time agreed. It is the good faith business judgment of the Board of Trustees of the DISTRICT that the services and funds provided by the FOUNDATION to the College have a fair market value far surpassing the value of the facilities, property and services provided by the DISTRICT to the FOUNDATION under this Agreement.

6. SERVICES BEYOND THE SCOPE OF THIS AGREEMENT

- 6.1. The Parties agree that from time to time the DISTRICT may need additional services and support regarding services related to grants and cash contributions that the DISTRICT may need support. These additional services and support may include, but are not limited to, project management, administration, reporting or delivery of non-educational related services.
- 6.2. The FOUNDATION will give due consideration for the opportunity to provide these additional services as requested by the DISTRICT. When such services are required, a written amendment to this MOU which identifies the specific services requested and the financial consideration to be provided shall be approved by both Parties.

7. CANCELLATION

- 7.1. The nature of these services requires consistent development that may be disrupted by premature cancellation. For this reason, cancellation is discouraged. However, the DISTRICT shall retain the right to cancel the MOU at any time with 90 days written notice to the FOUNDATION provided the DISTRICT agrees to accept responsibility for repayment of all salaries accrued by the FOUNDATION through the date of cancellation. **This provision does not apply should the MOU expire upon its own term as specified in section 2.1 of this MOU.**

8. DISPUTE RESOLUTION

- 8.1. As this MOU is intended to promote mutual benefit of the Parties involved, it is agreed that, in the event of a dispute arising from the terms of the MOU, a good faith effort shall be made to resolve the issues amicably. If a dispute arises out of or relates to this MOU, or the breach thereof, the Parties agree first to try in good faith, to settle the dispute by mediation. In the event mediation fails to resolve any dispute or breach of this MOU, then the MOU may be terminated as set forth in Section 7.
- 8.2. The Parties will cooperate with Judicate West, or other agreed mediation service in selecting a mediator and in scheduling the mediation proceedings. In the event the Parties cannot agree on a mediator, Judicate West, or its successor shall select five (5) potential mediators to choose from. Unless the Parties agree to a mediator, each

side shall strike a name with the FOUNDATION striking a name first, then the DISTRICT, etc., until only one name remains. The strike out process shall be completed within five (5) days of Judicate West, or its successor, providing the proposed list of five (five) potential mediators. Should either Party fail or delay submitting its strike out within the five (5) day time period, Judicate West, or its successor, shall randomly select a mediator from the pool of potential mediators after strike outs by either Party. The mediation shall be scheduled for one (1) full day, unless the Parties agree to continue mediation efforts beyond the first full day. The mediation shall occur in either Los Angeles or San Bernardino counties, unless the Parties mutually agree to a different location. The mediation will occur within thirty (30) days of either Party declaring a dispute or breach of this MOU, unless the Parties agree to schedule a date beyond thirty (30) days. The Parties agree that they will participate in the mediation in good faith and that they will share equally in its costs.

- 8.3. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the mediator or any Judicate West employees, or its successor, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

9. APPROVALS AND AUTHORIZATIONS OF MOU

- 9.1. The Parties to this MOU ("Such Party") represents and warrants that (i) Such Party has all necessary power and authority to execute and deliver this MOU and to perform all the terms and conditions of this MOU required of the Party to be performed by Such Party; (ii) no other proceedings on the part of either Party are necessary to authorize this MOU or to perform the obligations of the Party under this MOU; (iii) this MOU has been duly executed and delivered by the Party and constitutes the legal, valid and binding obligations of the Party, enforceable against the party and it in accordance with its terms; and (iv) the execution and delivery by the Party of this MOU do not, and the compliance by the Party with the provisions hereof will not conflict with, or result in any violations of, or constitute a default under any provision of the articles of incorporation or bylaws of the Party or any other agreement binding Such Party.

10. INVALIDITY

- 10.1. It is the intent of the Parties that the provisions of the MOU are all material and necessary for achieving the goals and objectives of the Parties. Accordingly, in the event that any paragraph or provision is held to be invalid or unenforceable for any reason, the Parties agree to negotiate in good faith to revise the subject paragraph or provision so that it is valid and enforceable and is consistent with the intent of the Parties or to sever it from the MOU while preserving the basic financial and professional relationships established herein. If after due negotiations the Parties are unable to resolve the issues so as to modify the invalid and unenforceable

paragraph or provision, then any party hereto shall have the right to terminate this MOU as provided in Section 9 of this MOU as written.

11. LIMITATIONS

- 11.1. Nothing in this MOU suggests that either Party shall be subject to the employment practices of the other Party with respect to their own employees.
- 11.2. This MOU shall not in any way limit, in either scope or amount, the indemnity and defense obligations separately owed by FOUNDATION to DISTRICT under this MOU.

12. FURTHER ACTS

- 12.1. Each Party to this MOU agrees to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this MOU.

13. CONSTRUCTION AND VENUE

- 13.1. This MOU and the rights and obligations of the Parties hereunder shall be governed by and construed in accordance with the laws of the State of California. Should any provision of this MOU require interpretation by a court of competent jurisdiction, it is agreed by the Parties that the court interpreting this MOU shall not apply a presumption that the terms of this MOU shall be more strictly construed against one Party by reason of the rule of construction that a document is to be construed more strictly against the Party whose agent prepared such document, it being agreed that the agents of all Parties have participated in the preparation of the MOU.
- 13.2. If any action is instituted to enforce or interpret this MOU, venue shall only be in the appropriate state or federal court having venue over matters arising in San Bernardino County, California, provided that nothing in this MOU shall constitute a waiver of immunity to suit by DISTRICT.

14. CAPTIONS

- 14.1. Section heading are inserted in this MOU soles for the purpose of convenience of reference and shall not be construed as part of the MOU.

15. LEGAL EXPENSES

- 15.1 The Parties hereto agree that each shall bear its own attorney's fees and other cost incurred in that action or proceeding in addition to any other relief to which such part may be entitled.

16. NOTICES

- 16.1 All notices, requests, demands, and other communications under this MOU shall be in writing and shall be deemed to have been duly given on the date of service if

served personally on the Party to whom notice is to be given, or within seventy-two (72) hours after mailing, if mailed to the Party to whom notice is to be given, by first class mail, postage prepaid, return receipt requested, and properly addressed to the party at the address indicated below, or any other address that any Party may designate by written notice to the others.

Victor Valley College Foundation

c/o Foundation President
18422 Bear Valley Road
Victorville, CA 92395

Victor Valley Community College

c/o Superintendent/President
18422 Bear Valley Road
Victorville, CA 92395

17. WAIVER

17.1 The waiver by any Party hereto of a breach of any provision of this MOU by another Party shall not operate or be construed as a waiver of any subsequent breach of the same provision or any other provision of this MOU.

18. REPRESENTATION OF PRIOR CONTRACTS

18.1 Each Party to this MOU represents and warrants to the other parties that no prior contract or agreement of any kind or any prior performance by Such Party will interfere in any manner with Such Party's complete performance of Such Party's duties and obligations hereunder or with Such Party's compliance with the other terms and conditions hereof, and that Such Party has the ability to perform all Such Party's obligations under this MOU without the participation or consent of any other person or entity.

19. GOVERNING DOCUMENTS/SEVERABILITY OF TERMS

19.1 The terms of this MOU and all obligations hereunder are to be interpreted consistently with the Master Agreement. Should any term herein be inconsistent with or contrary to the terms of this MOU, the terms of the Master Agreement shall govern and the term herein shall be invalid except that the Master Agreement can be terminated without cause as referenced in section 2.2 of this MOU. Should any term be deemed invalid, it shall be considered severed from this MOU and the remaining terms hereof shall remain in full force and effect.

20. CONFIDENTIALITY

20.1 Both Parties agree that from time to time each may be made aware of certain information believed confidential in nature. Each Party agrees to keep confidential such information, as requested, or which may be deemed injurious to, or adversely affect the business of the other Party.

21. BINDING AGREEMENT

21.1 The rights and obligations of the Parties under this MOU may not be assigned without the written consent of all Parties to this MOU. However, the rights and obligations of the Parties shall insure to the benefit of and shall be binding upon and enforceable by the heirs and successor of such Parties.

22. COUNTERPARTS

22.1 This MOU may be executed in one or more counterparts, and may be exchanged by fax transmittal, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In addition, the signatures to this MOU may be made by fax transmission, and the fax transmittal signature may be attached to this MOU as if it was an original.

23. AMENDMENTS

23.1 This MOU shall not be modified, amended or in any way altered except by an instrument in writing and signed by both the parties hereto and approved their respective boards or governing body.

24. GENDER

24.1 As used in this MOU, the masculine, feminine, or neuter gender, and the singular or plural number shall each be deemed to include the others whenever the context so indicates.

25. ENTIRE AGREEMENT

25.1 This MOU constitutes the entire agreement and understanding between the Parties. There are no oral understandings, terms, or conditions, and no Party has relied upon any representation, express or implied, not contained in this Agreement. Any prior understandings, terms, or conditions are deemed merged into this Agreement.

26. APPLICABLE LAW AND VENUE

26.1 This MOU, and the rights and obligations of the Parties, shall be governed by and construed in accordance with the laws of the State of California. If any action is instituted to enforce or interpret this Agreement, venue shall only be in the appropriate state or federal court having venue over matters arising in

San Bernardino County, California, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by District.

27. BINDING EFFECT OF MOU

27.1 This MOU is for the benefit of and shall be binding on the Parties and their respective predecessors, successors, Board of Trustees or Directors, or governing body, principals, officers, employees, agents, representative, and assigns. Nothing contained in this MOU shall be deemed to create any contractual relationship between DISTRICT and any third party, nor shall anything contained in this MOU be deemed to give any third party any claim or right of action against DISTRICT.

28. AUTHORITY TO SIGN

28.1 Each person executing this MOU on behalf of a Party represents and warrants that he or she represents and is authorized to execute and commit to this MOU on behalf of and to fully bind such Party.

29. APPROVAL

29.1 This Agreement shall be subject to approval by the DISTRICT Board of Trustees and FOUNDATION Board of Directors


IN WITNESS WHEREOF, the parties have executed this MOU as of the date first above written.

Victor Valley College Foundation

By: 

Mr. Mike Nutter, President

Victor Valley Community College District

By: 

Dr. Roger Wagner, Superintendent/President