

AGREEMENT
between
SOUTH PUGET SOUND COMMUNITY COLLEGE
and
SOUTH PUGET SOUND COMMUNITY COLLEGE FOUNDATION

This Agreement is entered into by and between South Puget Sound Community College, Community College District No. 24 ("College"), and the South Puget Sound Community College Foundation, a nonprofit corporation ("Foundation").

This Agreement is made in consideration of the mutual covenants set forth in it.

WHEREAS, the College, pursuant to RCW 28B.50.140(8), may receive such gifts, grants, conveyances, devises and bequests of real and personal property from private sources, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out College programs; and

WHEREAS, the College has, from this express power to receive property, the implied power to solicit the same; and

WHEREAS, the College has the authority to enter into contracts for these and other lawful purposes; and

WHEREAS, the Foundation as a tax-exempt nonprofit corporation must be organized and operated for the purpose to receive and administer property for the benefit of the College and to make contributions, grants, gifts, and transfers of property to the College; and

WHEREAS, the Foundation is empowered by the College to solicit and receive contributions, grants, gifts, and property in the name and on behalf of the College and receive property and to make contributions, grants, gifts and transfers of property to the College; and

WHEREAS, the Articles of Incorporation of the Foundation set forth in Article III state the purpose of the Foundation to be as follows:

- (a) To receive and hold by gift, bequest or purchase any real or personal property and to manage, invest and reinvest the same and to use and dispose of the same for scientific, educational and charitable purposes, all for the advancement of South Puget Sound Community College and its objectives and the encouragement and subsidation of its students and faculty; to hold, either absolutely or in trust for any of said purposes, funds and property of all kinds subject only to any limitations or conditions imposed by law or the instrument under which said property is received; to sell, lease, convey or otherwise dispose of any such property and to invest and reinvest the same or any proceeds thereof and to deal with and expend the principal and income for any of said purposes; to act as trustee; and, in general, to exercise any, all, and every power, including trust powers, which a corporation not for profit organized under the laws of the State of Washington for the foregoing purposes can be authorized to exercise.

(b) To engage in all such activities as are incidental or conducive to the attainment of the purposes of this corporation or any of them and to exercise any and all powers authorized or permitted to be done by a corporation under any laws that may be now or hereafter applicable or available to this corporation; provided that no member, director, officer, employee or representative of this Association shall take any action or carry on any activity by or on behalf of the Foundation not permitted to be taken or carried on by an organization exempt under Section 501(c) (3) of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended.

The foregoing clauses of this Article 3 shall each be construed as purposes and powers, and the matters expressed in each clause shall be in no way limited or restricted by reference to or inference from the terms of any other clauses, but shall be regarded as independent purposes and powers; and nothing contained in these clauses shall be deemed in any way to limit or exclude any power, right or privilege given to this corporation by law or otherwise.

And;

WHEREAS, the Foundation and College recognize that close collaboration and cooperation is necessary to (a) appropriately serve the educational mission and priorities of the College; and (b) to avoid competition for funds or unproductive duplication of effort;

NOW, THEREFORE, the parties hereby agree as follows:

I. SEPARATE OBLIGATIONS

A. The Foundation shall:

1. Expend its best efforts to seek to accrue gifts, grants, conveyances, devises, and bequests of money and real and personal property for the benefit of the College. For this purpose, it will design and implement programs and procedures approved by the College to solicit and receive such money and property and also to acquire such property by purchase, lease, exchange or otherwise, all to further the purposes of the educational mission of the College as determined by the Board of Trustees in stated goals, objectives, and priorities;

2. Comply with all applicable federal and state laws. For this purpose, the Foundation will establish rules and procedures for the management of all affairs of the Foundation in accordance with (a) the requirements for tax-exempt entities under the federal Internal Revenue Code, including its section 501(c)(3), and (b) the laws of the State of Washington applicable to the Foundation including, but not limited to, those governing charitable solicitations (e.g., RCW 19.09), nonprofit corporations (e.g., RCW 24.03), trusts holding property for charitable purposes, and the authority of state agencies (e.g. RCW 11.110 and 43.09);

3. Tender to the College immediately all gifts and donations it may receive wherein the College is designated as recipient, and properly account and be responsible for all donations which designate the Foundation as recipient;

4. Accept, hold, administer, invest and disburse such funds and properties of any kind or character as from time to time may be given to it, in accordance with the terms of such gift, provided, however, that any restricted or conditional gift which in any way obligates the College shall not be accepted by the Foundation without the prior written consent of the College President or other College official specifically delegated with written authority to approve such gifts on behalf of the College;

5. Make contributions, grants, gifts, and transfers of property, both real and personal, either outright or in trust, to or for the benefit of the College;

6. Use all assets and earnings of the Foundation for the benefit of the College or for payment of necessary and reasonable administrative expenses of the Foundation. No part of such assets and earnings shall accrue to the benefit of any director, officer, member, or employee of the Foundation or of any other individual, except for appropriate payment of reasonable compensation for services actually rendered or reimbursement of reasonable expenses necessarily incurred. Nothing herein shall limit the Foundation's ability to make grant, scholarship or professional development awards to College students, faculty and staff;

7. Not merge, consolidate, or change the Foundation's Articles of Incorporation without the written consent of the College;

8. Accept, hold, invest, protect, administer, and disburse funds received from the State and other sources under the exceptional faculty awards program in accordance with RCW 28B.50.835- .844 and WAC 131-16-450, and any instructions provided by the College pursuant to exceptional faculty awards rules, regulations, and agreements. The Foundation will invest and manage the funds as required by law. If the Foundation ceases to exist or function properly, or fails to provide the services specified in this Agreement, the ownership, management, and control of all such funds shall, upon notice and in accordance with the directions from the College Board of Trustees, be transferred to the College. The Foundation further agrees that at the end of each fiscal year it will provide a report and accounting of the endowment corpus and interest and any appreciation in value earned by the exceptional faculty award fund. The Foundation further agrees to provide to the College any other such information the College may request regarding the endowment funds.

B. The College shall:

1. Provide the Foundation with office space, including utilities, use of office furniture, file cabinets, and associated equipment, and warehouse space for temporary storage of donated materials and equipment;

2. Provide the Foundation with use of office machines, materials and services as reasonably required for its operation, including consumable office supplies, telephone service, postage, use of word-processing, photocopying, facsimile transmission, duplication, publication, and audio-visual equipment and services, and professional and/or staff services.

II. ACCOUNTING AND AUDITING

To provide proper accounting and auditing for the property and services provided by each party under Article I:

A. Accounting and fiscal functions shall be performed by the Foundation with oversight by the College business office.

B. Before each fiscal year (July 1 through June 30), the College business office shall prepare a budget showing all anticipated transactions and services under this Agreement for that upcoming fiscal year, including all space and equipment, supplies, personnel, and other services the College expects to provide to the Foundation. The presidents of the Foundation and the College, and/or their designees, will review that budget.

C. The value of all space and equipment, supplies, personnel, and other services which the College provides to the Foundation shall not exceed the total amount of \$700,000 in any fiscal year. The College will regularly keep track of the space and equipment, supplies, personnel, and other services it is providing to assure that this maximum amount is not being exceeded. The College business office will annually prepare, and the presidents of the Foundation and the College and/or their designees will annually review, a post-closing summary of the transactions between the two parties to assure that this maximum has not been exceeded.

D. The Foundation shall annually confirm to the College (1) that it has fully complied with its obligations to expend its best efforts to seek to accrue gifts, grants, donations and endowments for the benefit of the College; and (2) that it has used all assets and earnings of the Foundation for the benefit of the College or the payment of necessary and reasonable administrative expenses of the Foundation. For this purpose, the Foundation will list its accomplishments for the preceding year and share with the College its revenue and expense statements for the preceding year and its end-of-year balance sheet.

E. The Foundation is a separate entity from the College, and shall be periodically audited by a reputable independent accounting firm.

F. The College is a state institution of higher education, and shall be audited by the State Auditor's Office.

G. The Foundation shall permit the president of the College, or the president's designee, to inspect and/or copy all Foundation books, accounts and records at all reasonable times in order to determine compliance with the commitments made in this Agreement. At the president's discretion, his or her designee may include institutional or state auditors.

III. OTHER AGREEMENTS

A. Independent Capacity: At all times and for all purposes of this Agreement, each party shall act in an independent capacity and not as an agent or representative of the other party.

B. No Indemnification: -Each party shall be responsible for the actions and inactions of itself and its own officers, employees, and agents acting within the scope of their authority.

C. No Assignment: This agreement is not assignable by either party, in whole or in part.

D. Governing Law and Disputes: This Agreement shall be governed by the laws of the State of Washington. Before instituting any legal action hereunder, a party, through its president, shall meet with the president of the other party and attempt in good faith to resolve the disagreement. Venue of any action hereunder shall be in Thurston County Superior Court.

E. Entire Agreement: This constitutes the entire agreement of the parties, including all oral understandings, on the subject of their general and overall relationship. No alteration or modification of any term of this Agreement shall be valid unless made in writing, and signed by

the parties, and approved as to form by the Attorney General or designee. However, the parties may enter into other stand-alone agreements on specific subjects. All such other agreements shall also be in writing, and signed by the parties.

F. Termination: This Agreement shall continue until terminated. It may be terminated by either party only at the end of a State fiscal biennium, upon written notice to the other party given at least ninety (90) days in advance. However, this Agreement or a successor overall agreement with the College shall be necessary for the Foundation to operate.

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of the parties on this ____ day of March 2022

SOUTH PUGET SOUND COMMUNITY COLLEGE

By:



Foundation President

Dated:

March 31, 2022

SOUTH PUGET SOUND COMMUNITY COLLEGE

By:

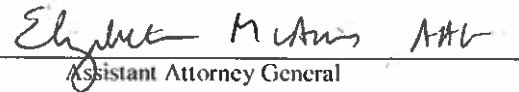


College Board of Trustees Chair

Dated:

April 12, 2022

Approved as to form:



Assistant Attorney General

Dated:

April 12, 2022