REVISED MEMORANDUM OF UNDERSTANDING

Between

NETWORK OF CALIFORNIA COMMUNITY COLLEGE FOUNDATIONS

And

FOUNDATION FOR CALIFORNIA COMMUNITY COLLEGES

This is the Revised Memorandum of Understanding (Revised MOU) between the Network of California Community College Foundations (NCCCF) and the Foundation for California Community Colleges (FCCC).

WHEREAS, FCCC is a nonprofit 501(c)(3) corporation and the official auxiliary foundation to the California Community Colleges Chancellor’s Office and the California Community Colleges Board of Governors and its mission is to benefit, support and enhance the California Community College system;

WHEREAS, FCCC’s strategic plan identifies primary objectives, one of which is “[t]o enhance the effectiveness of local college foundations by providing centralized philanthropic fundraising support services and supporting program and organizations such as the Network of California Community College Foundations;”

WHEREAS, the Network is a nonprofit 501(c)(3) corporation whose mission is to enhance and support the resource development capabilities of California Community College (CCC) foundations through leadership, training, and networking;

WHEREAS, on or about July 23, 2008, NCCCF and FCCC entered into a Memorandum of Understanding (MOU) to memorialize certain common understandings and again entered into another MOU on or about April 20, 2009;

WHEREAS, in 2011, the NCCCF Board of Directors engaged in strategic planning for NCCCF resulting in common understandings and goals that in order to provide the most optimal level of benefits to its members, the future evolution of NCCCF would be focused on: 1) providing enhanced, cost-effective professional development opportunities to its members; 2) playing a more active role in statewide advocacy and peer-to-peer networking; and 3) creating more financial stability for NCCCF;

WHEREAS, on January 20 2012, NCCCF and FCCC each individually and jointly desired to, agreed to and did enter into a Collaboration Agreement with CASE wherein NCCCF and FCCC agreed to contract with CASE to expand and enrich NCCCF membership benefits and to deploy CASE to manage and expand the annual Symposium as set forth within the written Collaboration Agreement (CASE Collaboration Agreement); and

WHEREAS, in light of the foregoing, NCCCF and FCCC now wish to execute this Revised MOU and terminate all previously-executed MOUs.

NOW, THEREFORE, the parties agree to the terms and conditions contained in this Revised MOU outlining the relationship between the NCCCF and FCCC for the Term or Renewal Term as defined in section 10 below as follows:

1. **Effective Date and Authority to Execute:** This Revised MOU shall become effective on the date after all parties have executed it (Effective Date). The signatories below and their respective parties each represent and warrant that they are authorized to sign this Revised MOU on behalf of their respective organizations.
2. **Fiscal Sponsor**: FCCC shall continue to serve as NCCCF’s fiscal sponsor. Fiscal sponsor services shall include: (1) treasury management, accounting, financial reporting, budget preparation, and coordination of federal and state tax returns with NCCCF’s tax preparer, (2) insurance management, (3) human resources, (4) basic IT support, (5) up to 30 hours of contract review per fiscal year, (6) website server hosting and maintenance, and (7) up to 5 hours of general marketing and communications support per month. In exchange for the fiscal sponsor services provided in connection with this Revised MOU, NCCCF will be charged a fiscal sponsor service fee of 15% charged against all expenses incurred by NCCCF excluding NCCCF members’ membership in CASE. FCCC shall maintain appropriate records of the activities of NCCCF and provide copies thereof as reasonably requested by the NCCCF.
3. **NCCCF Acknowledgments**: NCCCF shall maintain its own not-for-profit status and separate corporate identity and maintain sole responsibilities as related to the NCCCF Board of Directors. The NCCCF Board of Directors shall, at all times, follow proper corporate formalities including, but not limited to holding meetings, complying with its bylaws, voting, maintaining corporate minutes, keeping adequate and separate corporate records, etc. In addition, the NCCCF Board of Directors shall exercise fiduciary oversight relating to NCCCF including but not limited to a duty of loyalty, a duty of care (inquiry) and a duty to comply with investment standards. The NCCCF Board of Directors shall maintain ultimate review and control over NCCCF, setting organizational strategy and vision for NCCCF and making corporate decisions pursuant to its bylaws and legal obligations; FCCC may actively participate in the policymaking processes of NCCCF, including setting organizational priorities, budgets and staff compensation.
4. **Donation:** FCCC shall make an annual donation to NCCCF, fixed and capped at $50,000 (Donation), which shall be used to carry out NCCCF’s charitable purposes. NCCCF desires, and FCCC agrees, that in line with NCCCF’s mission, the Donation will be used to subsidize NCCCF expenses, including but not limited to NCCCF members’ memberships in CASE as stated in the CASE Collaboration Agreement, as well as NCCCF’s other direct and indirect costs within the parameters of an approved annual NCCCF budget.
5. **Staff:** As set forth herein,FCCC will dedicate existing or subsequently hired FCCC personnel to assist NCCCF with administration and oversight of NCCCF as follows:
   1. 5% of an FCCC Executive-level Full-Time-Equivalent (FTE) which shall be an executive management-level person who will provide strategic management support to NCCCF and who will attend NCCCF Board and Executive Committee meetings. Currently, this FTE will be FCCC’s Vice President, Resource Development and Communications.
   2. 10% of an Executive Director-level FTE which shall be an executive director-level person who will provide day-to-day management support for NCCCF. Currently, this FTE will be FCCC’s Executive Director, External Relations.
   3. 10% of an Administrative Assistant-level FTE which shall be an administrative assistant-level person who will provide administrative support services, such as setting meetings, scheduling conference calls, etc.

The above referenced personnel are direct operating costs and are not included in the Fiscal Sponsor services identified in section 2 (Fiscal Sponsor). As such, NCCCF will be charged actual costs incurred commensurate with percentages set forth herein of the applicable FCCC FTE’s annual salary or compensation and benefits.

The nature of the services to be performed for NCCCF by the above-referenced FTEs is memorialized in Exhibit A attached hereto (FCCC Staff Services Provided to NCCCF). Working in good faith with the NCCCF, Exhibit A may be amended from time to time. Amendments to Exhibit A may be made without revision or amendment to this Revised MOU. It is intended that Exhibit A may be reviewed and revised every year in association with the NCCCF’s annual budget review process.

It is understood and agreed that the above-referenced FTEs shall be subject to FCCC’s employment policies, procedures and administration. In light of FCCC’s administrative and other resulting responsibilities, FCCC, in its sole discretion, may modify the nature of services, and the identity and titles of the persons filling the roles of the above-referenced FTEs, including termination of employment of the person fulfilling the services.

1. **NCCCF Board Membership:** The President & CEO of the FCCC (or designee) shall be a voting Director of the NCCCF Board and of the NCCCF Executive Committee.
2. **Annual Budget:** In connection with the fiscal sponsor services provided as identified in section 2 (Fiscal Sponsor), FCCC will assist NCCCF in the preparation of an annual budget. The Board of NCCCF will review and approve its proposed annual budget by April 1 each year. The NCCCF fiscal year is July 1 through June 30. The annual budget of NCCCF will only be effective after it has been reviewed and approved by the NCCCF Board and by the FCCC Chief Financial Officer. Failure to timely adopt an annual budget may terminate this MOU and any further funding by FCCC on behalf of NCCCF. See, section 10 (Term and Termination).
3. **Financial Goals**: The NCCCF agrees that in line with the NCCCF’s goal of creating more financial stability for NCCCF, NCCCF shall make concerted, good faith efforts to ensure that: 1) it creates and approves a balanced budget where anticipated revenues meet or exceed costs and expenses, 2) the NCCCF Board exercises financial responsibility where costs and expenses are reasonable and controlled, 3) organizational decisions and discussions are geared toward the goal of creating and maintaining reasonable financial reserves and 4) efforts are continuously explored to seek out new and profitable revenue streams.
4. **NCCCF Membership Levels and Pricing**: NCCCF acknowledges that it has the responsibility to secure and maintain a minimum of 80 institution and district NCCCF memberships during Fiscal Year 2012 and 85 institution and district NCCCF memberships during any fiscal year thereafter (or as otherwise required by any valid amendment to the CASE Collaboration Agreement). In connection with NCCCF’s annual budget review, NCCCF agrees to review the pricing of all NCCCF membership dues levels and to make adjustments as necessary to avoid NCCCF from incurring net losses.

The fiscal year 2013 NCCCF pricing structure for NCCCF memberships is memorialized in the attached NCCCF Membership Dues Structure – Fiscal Year 2013, Exhibit B. Exhibit B may be amended, in writing, from time to time as determined in alignment with section 8 (Financial Goals). Amendments to Exhibit B may be made without revision or amendment to this Revised MOU. It is intended that Exhibit B is to be reviewed every year in association with the NCCCF’s annual budget review process.

1. **Term and Termination:** The term of this Revised MOU shall be for a period of three years commencing on the Effective Date (Term). The Revised MOU shall automatically renew for additional three-year periods thereafter (Renewal Term) unless any party provides a written Notice of Termination to the other not less than six months in advance of the expiration date of the current applicable Term or Renewal Term.

Either party may terminate this MOU in writing upon 120 days’ notice of Notice of Termination to the other party for any reason.

At FCCC’s option, FCCC may terminate this Revised MOU at any time, upon written notice of Notice of Termination for the following reasons: 1.) violation of section 11 (No Actions Inconsistent with 501(c)(3) Status); 2.) violation of section 7 (Annual Budget); 3) when, in any fiscal year, or an accumulation of any fiscal years, NCCCF’s expenses exceed revenues in an amount exceeding $25,000.

In the event of any termination of this Revised MOU, and as of the date identified in the Notice of Termination, or as otherwise identified therein, no further obligation shall be incurred by either party related to this Revised MOU and any funds granted to the NCCCF by the FCCC that remain unexpended on the date of termination shall be returned within 30 days to the FCCC. Likewise, any funds held by the FCCC on behalf of the NCCCF shall be returned to the NCCCF within 30 days of the effective date of termination, less any outstanding reimbursements.

1. **No actions inconsistent with 501(c)(3) status**: Neither NCCCF or FCCC may engage in any attempt to influence legislation within any meaning of the Internal Revenue Code (IRC) Section 501(c)(3) that would jeopardize either NCCCF or FCCC’s tax exempt status. Under no circumstances, shall NCCCF intervene in any political campaigns, induce or encourage violations of law or public policy, cause any private inurement or improper private benefit to occur, nor take any other action inconsistent with IRC Section 501(c)(3). NCCCF agrees not to use funds or engage in any activities which would jeopardize the tax-exempt status of FCCC in any way.
2. **Indemnification:** In the event that a claim of any kind is asserted against the FCCC related to or arising from the NCCCF and/ or a proceeding is brought against the FCCC by reason of such claim, the NCCCF upon written notice from the FCCC, shall, at NCCCF’s expense, resist or defend such action or proceeding at no cost to the FCCC and by counsel approved by the FCCC in writing, provided such legal action is not a consequence of any act or omission of the FCCC in which case the FCCC shall, at the FCCC’s expense, defend such action at no cost to the NCCCF.

NCCCF hereby agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the FCCC, its officers, directors, employees, and Board of Directors, and each of them, from and against any and all claims, liabilities, losses, and expenses (including reasonable attorney’s fees) directly, indirectly, wholly, or partially arising from or in connection with any act or omission by NCCCF, its employees or agents in applying for or accepting the assistance of the FCCC except to the extent that such claims, liabilities, losses and expenses arise from or in connection with any act or omission by the FCCC, its officers, directors, or employees.

FCCC hereby agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the NCCCF, its officers, directors, employees, and Board of Directors, and each of them, from and against any and all claims, liabilities, losses, and expenses (including reasonable attorney’s fees) directly, indirectly, wholly, or partially arising from or in connection with any act or omission by FCCC, its employees or agents in applying for or accepting the assistance of the NCCCF except to the extent that such claims, liabilities, losses and expenses arise from or in connection with any act or omission by the NCCCF, its officers, directors, or employees.

1. **General Terms and Conditions**
   1. This Revised MOU, and any valid amendments thereto, constitutes the entire, complete, final and exclusive agreement between the parties with respect to the subject matter hereof and supersedes and replaces any and all prior and contemporaneous communications between FCCC and NCCCF regarding such subject matter.
   2. This Revised MOU is the product of joint collaboration and drafting by authorized representatives of both NCCCF and FCCC. Therefore, an interpretation of any term or condition contained herein shall not be construed against either party as the drafting party.
   3. If any part of this Revised MOU is found invalid or unenforceable, that part will be stricken and/or amended to achieve as nearly as possible, the same economic effect as the original provision and the remainder of this Revised MOU will remain in full force and effect.
   4. Paragraph headings in this Revised MOU are used solely for convenience, and shall be wholly disregarded in the construction of this Revised MOU. Paragraph headings shall not be deemed to define, limit or extend the scope or intent of the paragraphs to which they appertain.
   5. The Parties agree that this Revised MOU may be executed in counterparts, each of which shall be deemed to be an original, but both of which together shall constitute one and the same instrument, and that a photocopy, pdf or facsimile may serve as an original. If this Revised MOU is executed in counterparts, no signatory hereto shall be bound until both the parties have fully executed a counterpart of this Revised MOU.
   6. This MOU may be modified only by a written document dated subsequent to the Effective Date and signed by authorized representatives of each party. The parties agree that this requirement for written modification cannot be waived and that any attempted waiver shall be void.
   7. Nothing in this Revised MOU shall constitute the naming of FCCC as an agent or legal representative of NCCCF for any purpose whatsoever. This Revised MOU shall not be deemed to create any relationship of agency, partnership, or joint venture between the parties hereto, and NCCCF shall make no such representation to anyone. FCCC does not assume control over NCCCF decisions. Nothing in this Revised MOU shall cause FCCC to be liable for the debts or acts or omissions of NCCCF under any circumstances; NCCCF shall, at all times, be liable for its own debts or acts or omissions and as otherwise stated herein.
   8. The parties agree that to the extent the execution of this Revised MOU is deemed to terminate any prior MOU, the parties hereby expressly waive any notice provisions set forth therein.

NETWORK OF CALIFORNIA COMMUNITY COLLEGE FOUNDATIONS (NCCCF)

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Signature Date

FOUNDATION FOR CALIFONIA COMMUNITY COLLEGE (FCCC)

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Signature Date

EXHIBIT A: FCCC Staff Services Provided to NCCCFREVISED EXHIBIT A: FCCC Staff Services Provided to NCCCF

**September 24, 2012 (Updated June 2015)**

**Foundation for California Community Colleges**

***Services Provided to Network of California Community College Foundations***

| Service | Activities | | Staff Support | |
| --- | --- | --- | --- | --- |
| General Administration | | * Clerical support * Document and file retention * Hosting and support for NCCCF Web site, email address, phone lines, and listserv * By-laws | | * Staff support on document and file retention, management of phone line and email account * IT team: technical support for Web site, email address, phone lines and listserv | |
| Board Administration | | * Support to board in all meetings, including: * Development of board agendas and packets * Taking of and dissemination of board meeting notes * Handling of all meeting logistics, including location, refreshments, AV needs, transportation options, etc. * Support to board for elections * Development and updating of board roster * Coordination of strategic planning efforts and implementation under the direction of the Board * Board of Directors and Officers Liability Insurance Policy * Ensure Directors and Officers Liability Policy is maintained and kept current | | * Nancy Pryor: primary board contact, oversight and communication of all board materials * Kyle Hyland: Board minutes and meeting logistics * Andrea Meyer: legal oversight | |
| Committee Support | | * Support in committee meetings and calls as necessary * Foundation representation on various committees: * Executive committee * CASE advisory committee * Conference advisory committee * Marketing committee * Other, as necessary | | * Foundation staff assist with committee logistics and meetings | |
| Accounting Support | | * Tax preparation and filing * Develop of financial statements and budget * Management of accounts payable and receivable | | * Services provided by Accounting Department | |
| Marketing Support | | * Web site maintenance, design and content updating * Posting and updating of job descriptions on NCCCF Web site as a member benefit. * NCCCF member outreach and communication, including email updates, letters, and other communication pieces * Development and printing of all NCCCF stationary and letterhead | | * Marketing team: marketing design and development | |
| Conference Support | | * Participation on Conference planning committee * Exhibitor and sponsor outreach, solicitation and coordination as it relates to CASE/NCCCF/FCCC agreement * Post-event follow-up (as needed) | | * Nancy Pryor: member of planning committee (with CASE and three NCCCF members) | |
| Membership Management | | * Maintenance of updated membership lists and contact information * All member invoicing and billing * Membership outreach * Informational support to members * Coordinate with and payment to CASE | | * Nancy Pryor and Kyle Hyland: Oversees management of records and contact information, facilitates billing process with Foundation staff * Melissa Conner: provide oversight of membership management * Nancy and Kyle: informational support to members | |
| Fundraising and Grant Writing | | * Development of sponsorship model and outreach strategy * In conjunction with the Resource Development Committee and NCCCF Board of Directors, cultivation and solicitation prospective partners * Tracking and fulfillment of sponsorships * Coordination with NCCCF partners to provide member benefits and funding opportunities for the NCCCF * Assist and advise to identify funding opportunities and develop proposals and case statements as necessary | | * Melissa Conner: Executive oversight * Nancy Pryor: coordination with NCCCF partners * Grants Development Manager: assistance with funding proposals as necessary | |

EXHIBIT B: Dues structure for NCCCF Members – Fiscal Year 2016

A sliding scale membership dues structure will be offered for membership in NCCCF based on total full time enrollment of the college or district, as noted below. Consistent with the CASE Collaboration Agreement, NCCCF members will become members of CASE upon payment of NCCCF dues. CASE membership dues for all NCCCF members will be paid directly by NCCCF to CASE.

|  |  |
| --- | --- |
| Full Time Enrollment (FTEs) | Membership Dues Per Year |
| 0-4,999 | $750 |
|  |  |
| 5,000-9,999 | $1050 |
|  |  |
| 10,00-19,999 | $1350 |
|  |  |
| 20,000 + | $1650 |

An early bird discount in the amount of $50 are offered for members who renew on or before July 31, 2016. If all foundation within a multi-college district join the Network, the district-level foundation is eligible for a complimentary membership.