MASTER AGREEMENT

BY AND BETWEEN THE BARSTOW COMMUNITY COLLEGE DISTRICT
AND
THE BARSTOW COLLEGE FOUNDATION

This Agreement is made and entered into this 25th day of September, 2023 ("effective date"), by and between the Barstow Community College District ("District") and the Barstow College Foundation ("Foundation") and replaces the Agreement entered into on September 25, 2018 between the District and the Foundation.

WHEREAS, the Foundation is a California nonprofit public benefit corporation established and operated for the public and charitable purpose of promoting and assisting the educational services of Barstow Community College, as specified in the Foundation's Article of Incorporation, Bylaws, and this Agreement; and

WHEREAS, the District was organized pursuant to Part 45 of Title 3 of the Education Code of the State of California, for the purpose of operating Barstow Community College as the primary institution of post-secondary education for the residents and businesses of the greater Barstow area; and

WHEREAS, the District has found that the administration of fundraising, development and foundation funds management functions is most efficiently performed by an auxiliary entity; and

WHEREAS, the District duly recognized the Foundation as an auxiliary organization in accordance with Education Code section 72670, et. seq., and California Code of Regulations, title 5, section 59250, et. seq.; and

WHEREAS, the Foundation has and will continue to maintain its existence and operations in accordance with District Administrative Procedure 3600.

NOW THEREFORE, the District and the Foundation hereby enter into this Agreement defining the parameters of their relationship.

Article 1. PURPOSE

The purpose of the Foundation is to promote the District and assist the District's educational services by receiving gifts, property and funds to be used for the benefit of the District, functions which are integral to the District programs. The District has determined that administration by the Foundation of the functions and activities described herein, instead of administration by and through the District, is more effective in accomplishing those functions and activities than would be possible under usual governmental budgetary, purchasing, and other fiscal procedures. Further, the District expects to benefit from the experience and expertise of the Foundation.

Article 2. SERVICES. PROGRAMS, AND FUNCTIONS

The Parties mutually agree that the Foundation will manage, operate, and administer the following services, programs, and functions:

1. Assist in soliciting, administering and managing loans, scholarships, grants-in-aid for the benefit of the District and its students;
2. Promote, administer and manage workshops, conferences, institutes, and federal and specially funded projects related to the District's educational programs, as agreed upon by the District and the Foundation from time to time;
3. Administer and manage alumni activities relating to District programs;
4. Solicit, administer and manage gifts, bequests, devises, endowments and trusts for the benefit of District and its students;
5. Benefit the District with the experience and expertise of the Foundation; and
6. Manage, operate and administer other services, programs, functions or activity, if such services are fist approved by the District.

Gifts to the District shall be accepted under the provisions of applicable District Board policy. Gifts to the Foundation shall be accepted as authorized by the Foundation' s Board of Directors, on the condition that such gifts be used only for purposes consistent with the District's implementing regulations.

Article 3. USE OF DISTRICT FACILITIES

The Foundation may occupy, operate, and use District facilities and property separately or jointly with the District. The Foundation shall reimburse the District for its pro portioned use of District facilities bypaying a rental charge to the District for such use. The annual charge for such use shall be $1.00 for the term of this Agreement. There shall be no charge to the Foundation for applicable remodel/renovationor reconstruction should the District require relocation to a comparable space. The Foundation's use of the District's facilities does not establish a land lord/ tenant relationship between the District and the Foundation, unless such relationship is otherwise established by a separate written agreement entered into between the District and the Foundation.

The Foundation shall use the facilities and property only for those services and functions that are consistent with this Agreement and the policies, rules and regulations, which have been or may be adopted by the Board of Trustees of the Barstow Community College District. The Foundation shall keep and maintain all utilized District facilities in a clean and orderly condition. The District agrees that it will keep the described facilities in good repair.

The right to use any of the District facilities or equipment included in this Agreement or amendments shall cease upon 90 days written notice by the District Superintendent/President or designee, that the facilities are needed for the exclusive use of the District.

During the term of this Agreement, the Foundation shall have the right to place and attach fixtures, signs, furniture and equipment in or upon facilities as authorized in writing by the District Superintendent/President as to number, site and location. Fixtures, signs, or equipment so erected, placed, or attached by the Foundation shall be and remain the property of the Foundation and shall be removed therefrom by the Foundation upon termination of this Agreement or at any time when directed by the District Superintendent/President in writing.

Article 4. REIMBURSEMENT FOR DISTRICT SERVICES, MAINTENANCE AND OPERATING EXPENSES

On an annual basis the District Superintendent/President or her designee shall determine, in advance of the performance of such service, the cost of District employees on loan or providing professional services to the Foundation, including, but not limited to, Accounting, Computing/Technology Services, Custodial Services, Human Resources, Media Services, Payroll, Purchasing, and other District services.

The Foundation shall provide full reimbursement to the District for the costs of services performed by District employees under the direction of the Foundation including, but not limited to, the salary and benefits of Foundation support staff employed by the District. The Foundation shall reimburse the District for that portion of the employee's full-time assignment (and corresponding benefits) that is spent in providing said services. Methods of proration where services are performed by District employees for the Foundation shall be simple and equitable. Notwithstanding the foregoing requirement for full reimbursement, up to 50% of the reimbursement by the Foundation may be made in the form of non-monetary benefits that the Foundation provides to the District or College, such as increased community awareness or other such benefits that are agreed upon by District officials and the Foundation. Such non-monetary benefits shall be assigned a good-faith reimbursement value by the District.

The District shall invoice the Foundation annually for its apportioned use of telephone lines, Internet services, copying, computers, and insurance coverage, as agreed upon by the parties each year.

Article 5. **INDIRECT COSTS**

If the Foundation administers any special or federally sponsored programs, it shall reimburse the District for indirect costs associated with the performance of services by the District for the Foundation relating to the same. In advance of administering such program, the District and the Foundation agree to assign a simple and stable method for determining the extent of the Foundation's liability for indirect costs. Such liability shall take into consideration the District's special or federal indirect cost rate and the approved indirect cost allocation, if any, of the special or federal program award.

Article 6. **PUBLIC RELATIONS EXPENDITURES**

With respect to any expenditures for public relations and fund development or other purposes that would serve to augment District appropriations for operation of the District, the Foundation may expend funds in such amount and for such purposes as are approved by the Board of Directors of the Foundation. The Foundation shall file with the District Superintendent/President a statement of its policy on accumulation and use of public relations funds and fund development. 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 7. **DISPENSATION OF NET EARNINGS**

Income generated by the Foundation in excess of costs and provisions for equipment, maintenance, reserves, and working capital shall be used for the general benefit of the District, its students, and its educational programs, as well as to operate programs as determined by the Board of Directors and approved by the District Superintendent/President pursuant to Article 2 of this Agreement.

Article 8. **DISPENSATION OF NET ASSETS UPON DISSOLUTION OR CESSATION OF OPERATIONS**

Upon dissolution of the Foundation or the cessation of operations of the Foundation under this Agreement, unless extended or renewed, the net assets of the Foundation resulting or arising from this

Agreement shall either be transferred to the District or a non-profit tax-exempt organization designated by the District. In the event the Foundation ceases to be an auxiliary organization it shall retain the assets it acquires in furtherance of this Agreement so long as it operates for the benefit of the District and its students. If the District removes the Foundation from its list of auxiliary organizations in good standing, the Foundation's net assets and liabilities shall be distributed to the District.

The District and the Foundation shall meet to discuss amending this term, Article 8, during the 90 days before the expiration of the term of this Agreement. If the Parties fail to meet prior to the expiration of the term of this Agreement, this Article 8 will remain unchanged and will automatically renew for subsequent annual periods in accordance with the term of the Agreement (as provided in Article 13, Section 13.4).

Article 9. COVENANTS

During the term of this Agreement, including any renewals and extensions thereof, the Foundation agrees to maintain its organization and to operate in accordance with such statutes and regulations of the State of California as may, from time to time, apply to auxiliary foundations, including Education Code sections 72670 through 72682 and the regulations contained in Title 5, section 59250 et seq., as well as District Board Policy and the District ' s Auxiliary Organization Implementing Regulations as set forth in Administrative Procedure 3600.

The Foundation shall comply with the provisions of its Articles of Incorporation and Bylaws as, from time to time, amended. Further, the Foundation shall not amend any provisions of its Articles, Bylaws or other governing documents, policies or procedures so as to violate or frustrate the purpose of this Agreement.

The Foundation agrees to maintain its organization and operate in accordance with Internal Revenue Code sections 170(b)(1)(A), 501(c)(3), and 509(a)(l), Corporations Code sections 5110-6815, California Government Code section 12580, and the Foundation shall maintain compliance with all requirements thereof at all times.

During the terms of this Agreement, including any renewals and extensions thereof, the District agrees to maintain its existence and to operate in accordance with such statutes and regulations of the State of California, as may, from time to time, regulate and govern Community College Districts having auxiliary foundations; and to comply with the provisions of its governing documents as, from time to time, amended. Further, the District shall not amend any provision of its governing documents, policies or procedures so as to violate or frustrate the purpose of this Agreement.

Article 10. ADVICE OF COUNSEL AND CERTIFIED PUBLIC ACCOUNTANT

The Foundation shall obtain the services and counsel of at least one attorney admitted to practice law in this State. The attorney need not be a member of the Foundation's Board, but the Foundation is responsible for the costs associated with such counsel. The Foundation shall obtain the services and counsel of at least one licensed certified public accountant. The certified public accountant need not be a member of the Foundation's Board, but the Foundation is responsible for the costs associated with such counsel.

Article 11. LIMITATION ON CONTRACTS OR BUSINESS ARRANGEMENTS INVOLVING REAL PROPERTY

The Foundation understands that it may not enter into any contract or other business arrangement involving real property either by lease involving payments of more than $25,000 per annum and duration terms of more than one year, or by purchase without prior notification and consultation with the District Superintendent/ President. In accordance with this understanding, the District shall not enter into any such contract or other business arrangement without prior notification and consultation with the District Superintendent/President as provided herein.

Article 12. ACCOUNTING AND RECORDS

Section 12.1 - Foundation Financial Records: The Foundation shall provide the District with copies of, and shall maintain in its own files, records, and accounts of its program expenditures pursuant to its budgets for a minimum of five years, in accordance with Administrative Procedure 3600, or as otherwise required by law. The Foundation's program and budget records shall include transactions of purchases, disbursements, and investments.

Section 12.2 - Relevant District Financial Records: To the extent permitted by law, the District shall maintain and provide the Foundation with copies of all records and accounts of transactions relevant to the Foundation and this Agreement.

Section 12.3 - Audit Reports: The Foundation shall retain an independent CPA firm to annually audit the Foundation. The Foundation is responsible for the costs of the CPA audit services. The Foundation shall provide the District with its completed audit reports within 30 days of receipt by the Foundation.

The District shall also supply the Foundation with the relevant portions of its annual audit reports to the Foundation, as requested.

Article 13. MISCELLANEOUS

Section 13.1 - Third Party Agreements: Neither the District nor the Foundation shall enter into any contract that would obligate the other without the express written consent of the party to be charged.

Section 13.2 - Non-Assignability: This Agreement may not be assigned by either the District or the Foundation, either in whole or in part, without the express written consent of the other.

Section 13.3 - Foundation Board Representation: One member of the District's Board of Trustees and the District Superintendent/President shall represent the District as non-voting ex-officio Directors of the Foundations Board.

Section 13.4 - Contract Administrator: In dealing with all matters relating to this Agreement and provisions thereof, the Foundation shall be represented by its President or its Executive Director.

Section 13.5 - 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 served personally, or three days after mailing if sent by certified mail, postage prepaid, to the Foundation's Executive Director or the District Superintendent/President, as follows:

If to District:
Eva Bagg, Ph.D.
Superintendent/President
Barstow Community College District
2700 Barstow Road, Barstow CA 92311
Phone: (760) 252-2411 x 7215
Email: ebagg@barstow.edu

If to Foundation:
President
Barstow College Foundation
2700 Barstow Road, Barstow, CA 92311
Phone: (760) 252-6709
Email : bcf@barstow.edu

Any party may change the address or persons to which notices are to be sent to it by giving the written notice that such change of address or persons to the other parties in the manner provided for giving notice.

Section 13.6 - Term of Agreement: This Agreement shall commence upon its effective date, and shall continue for a term of 5 years, unless sooner terminated as herein provided; provided, however, that this Agreement shall be renewed automatically for subsequent annual periods, unless either party notifies the other in writing not later than 90 days prior to any renewal date of its intention not to renew. In any event of termination, the provisions governing the distribution of assess upon dissolution or cessation of operations (Article 8), shall survive such termination.

If the Foundation does not remain in good standing in accordance with the District's Implementing Regulations (AP 3600), this Agreement will immediately terminate and the Foundation will terminate any contracts with third parties, subject to the provisions Article 8 of this Agreement, which shall survive such termination. Immediately upon notice of termination by either Party, the Foundation shall arrange for the vacation and return of any space, facilities, equipment or other property of the District provided under this Agreement.

Section 13.7 - Governing Law: This Agreement shall be construed in accordance with the laws of the State of California applicable to agreements made and to be performed in such state, and the state and federal courts located in San Bernardino County, California and the Central District of California shall have exclusive jurisdiction of all suits and proceedings arising out of or in connection with this Agreement. Both Parties hereby submit to jurisdiction of said courts for purposes of any such suit or proceeding, and waive any claim that any such forum is inconvenient.

Section 13.8 - Headings: The titles and headings of the various sections of this Agreement are intended solely for convenience of reference and are not intended to explain, modify or place any construction on any of the provisions of this Agreement.

Section 13.9 - Amendment of Agreement: This Agreement may be amended solely by means of a written instrument, executed by the District and Foundation, and appended to this Agreement.

Section 13.10- Indemnification: The Foundation agrees to indemnify, defend and hold harmless the District, its officers, agents, and employees from any and all loss, damage or liability that may be suffered or incurred by the District, its officers, agents and employees, caused by, arising out of, or in any way connected with this Agreement, or the use of any of facilities by the Foundation in connection with this Agreement; provided that the loss, damage or liability does not arise from the intentional or negligent acts or omissions of the District, its officers, agents or employees.

It is expressly understood and agreed that the foregoing provision is intended to be as broad and inclusive as is permitted by the law of the State of California, that this indemnity will survive the expiration or termination of this Agreement, and that this indemnity shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Foundation under workers' compensation acts, disability benefit acts or other employment benefit acts.

Section 13.11-Termination of Prior Master Agreement: By executing this Agreement, the Parties agree that the former Master Agreement entered into between the District and the Foundation is hereby terminated and is of no further force and effect.

Section 13.12 - Entire Agreement: This Agreement any appendices to it contain all representations and the entire understanding and agreement between the Parties. Correspondence, memoranda, and oral or written agreement that originated before the date of the Agreement are replaced in total by this Agreement, unless otherwise expressly stated in this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto the day and year first above written.

DISTRICT: **BARSTOW COMMUNITY COLLEGE DISTRICT**

By: ______________________________
Eva Bagg, Ph.D.
Superintendent/President
Barstow Community College District

FOUNDATION: **BARSTOW COLLEGE FOUNDATION**

By: ______________________________
Albert Gallegos
President, Barstow College Foundation
Board of Directors