

OPERATING AGREEMENT

Between Coconino County Community College District and
the Coconino County Community College Foundation

THIS AGREEMENT, entered into as of this 27th day of November 2012, by and between the Coconino County Community College District, hereinafter referred to as the "College," and the Coconino County Community College Foundation, hereinafter referred to as the "Foundation."

RECITALS

- A. The College is an institution of higher education created pursuant to Title 15, Chapter 12 of the Arizona Revised Statutes (A.R.S.) , and the College is accredited by the Higher Learning Commission and is a member of the North Central Association; and
- B. The College has the authority to enter into contracts as are necessary for the efficient management of the College pursuant to A.R.S. §15-1444; and
- C. The Foundation is a separate non-profit corporation with tax-exempt recognition pursuant to Internal Revenue Code §501(c)(3), incorporated on July 22, 1993, for the purpose of stimulating voluntary private support and nurturing relationships with potential donors, including alumni, parents, friends, corporations, foundations, and others for the benefit of the College; and
- D. The Foundation is organized and operated exclusively to generate, receive, hold, invest, manage, and allocate cash, securities, real and intellectual property, and other private resources for the advancement, achievement, and support of the educational and cultural programs and services of the College, along with providing opportunities for students unavailable with state funds; and
- E. The Foundation is dedicated to assisting the College in the building of the endowment and in addressing, through financial support, the long-term academic and other priorities of the College; and
- F. The College and the Foundation agree to preserve the integrity and autonomy of each organization, permitting each to effectively fulfill its own mission. It is the intention of the parties hereto to create the relationship between them of service providers to the other party only, and no other relationships whatsoever. Nothing contained herein shall be construed to make the parties hereto partners or joint ventures, or to create any agency relationship by or between them. No party hereto may contract for or incur debts on behalf of the other.

NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions contained in this Agreement, the College and the Foundation agree as follows:

ARTICLE ONE
Employees

- 1.1 Except as provided in this Agreement, employees of one party shall not be deemed to be employees of the other party, and the employing party shall be responsible for the payment of all wages, withholding and payment of employment taxes, and the provision of employee benefits, if any, offered by the employer to the employee.
- 1.2 The College is responsible for the employment, compensation, and evaluation, with input from the Foundation Executive Committee, of the Executive Director of Institutional Advancement. The College will also abide by all federal and state employment regulations, including, but limited to the following: the Fair Labor Standards Act (FLSA); overtime pay; the Equal Pay Act; employment of children; reporting wages (IRS Form W-2); anti-discrimination laws; withholding federal and state taxes; social security and Medicare (FICA); Personal Responsibility and Work Opportunity Reconciliation Act of 1996; and safety and health regulations.

ARTICLE TWO
College Responsibilities

- 2.1 The Executive Director of Institutional Advancement shall maintain copies of the plans, budgets, and donor records of the Foundation.
- 2.2 The College President is responsible for communicating the College's priorities and long-term plans, as approved by the College Governing Board, to the Foundation.
- 2.3 The College shall include the Foundation as an active and prominent participant in the strategic planning for the College.
- 2.4 The President of the College shall serve as an ex-officio nonvoting member of the Foundation Board and shall assume a prominent role in fund-raising activities.
- 2.5 The College President, with the concurrence of the Foundation Board, shall establish goals, objectives and expectations for the CCC Executive Director of Institutional Advancement. The President, in collaboration with the Foundation Executive Committee, shall evaluate the CCC Executive Director of Institutional Advancement's performance at least once annually. The President shall have the power to remove the CCC Executive Director of Institutional Advancement if his/her performance does not meet the goals and expectations jointly set forth by the Foundation and the College or if it is in the best interest of the College.
- 2.6 Subject to the confidentiality requirements of the Family Rights and Privacy Act (20 USC 1232(g)) ("FERPA") and regulations adopted pursuant to FERPA, the Individuals with Disabilities Education Act ("IDEA") and regulations adopted thereunder, and applicable State laws and College policies controlling the disclosure of personally

identifiable information from a student's education records, the College will provide directory information on current and former students for the use of fundraising and alumni involvement activities upon request by the Foundation.

- 2.7 In return for Foundation responsibilities per Article Three, the College shall fund Institutional Advancement support staff positions and provide to the Foundation office space, office equipment and supplies, printing, telephone and mail services, and other such assistance as utilities, janitorial service and security.
- 2.8 The College will provide bookkeeping services to assist the Foundation with its accounting needs and will bill these services back to the Foundation at cost.

ARTICLE THREE

Foundation Responsibilities

3.1 Fund-Raising

3.1.1 The Foundation shall contribute to the College annually an amount consistent with applicable provisions of the Internal Revenue Code and the regulations promulgated thereunder.

3.1.2 The Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of the College. The Foundation will implement the development goals and recommendations that are accepted by the College.

3.1.3 The Foundation, in consultation with the College President, is responsible for planning and executing comprehensive fund-raising and donor-acquisition programs in support of the College's mission. These programs include annual giving, major gifts, planned gifts, special projects, and campaigns as appropriate.

3.1.4 The Foundation shall obtain prior approval from the College before accepting any gift for the benefit of the College that contains restrictive terms, conditions, and limitations or involves real estate. The Foundation will advise prospective donors that such gifts are subject to the approval of the College.

3.1.5 The Foundation will promptly acknowledge, and issue receipts for, all gifts on behalf of the Foundation and the College.

3.1.6 The Foundation shall provide the College Governing Board annual reports, which will include all major fund raising initiatives; the designation or purpose of the donations; and the disposition of the donation.

3.1.7 The Foundation will provide appropriate recognition and stewardship of all gifts and adhere to the Donor Bill of Rights.

3.1.8 The Foundation shall establish and enforce policies to protect donor confidentiality and rights to the extent permitted by law.

3.1.9 The Foundation shall be solely responsible for the satisfaction of its own obligations, debts, liabilities, and judgments. The Foundation shall not use restricted funds for the satisfaction of any such obligation, debt, liability or judgment.

3.2 Asset Management

3.2.1 The Foundation will establish asset-allocation, disbursement, and spending policies that adhere to applicable federal and state laws including the Revised Arizona Prudent Investor Act (A.R.S. §14-7601 – 14-7611 (West 2005)).

3.2.2 The Foundation will receive, hold, manage, invest, and disburse contributions of cash, securities, patents, copyrights, and other forms of property, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred gift instruments.

3.2.3 The Foundation will engage an independent accounting firm annually to conduct an audit of the Foundation's financial and operational records and will provide the College with a copy of the annual audited financial statements.

3.3 Transfer of Funds

3.3.1 The Foundation is the primary depository of private gifts and will transfer funds to the designated department within the College in compliance with applicable laws, College policies, and gift agreements.

ARTICLE FOUR Confidentiality

4.1 Neither the Foundation nor the College shall disclose or use any private confidential, proprietary, or trade secret information provided from one to the other except as required in and by the terms of this Agreement, or as required by law.

ARTICLE FIVE Indemnification

5.1 Each party shall indemnify and hold harmless the other party, its Governing Board, officers, employees, agents, and students in their official and personal capacities, from and against any and all claim, damage, liability, injury, expense, demands, and judgments, including court costs and attorney's fees, arising out of the party's performance in this Agreement, except for injury or damage caused by the sole negligence of such party. This provision shall continue beyond termination or expiration of this Agreement.

ARTICLE SIX

Term

- 6.1 The term of this Agreement shall commence on November 27, 2012 and shall terminate on June 30, 2013; provided, however, that the parties may renew this Agreement annually by mutual agreement in writing signed by both parties.

ARTICLE SEVEN

Termination

- 7.1 Either party hereto may cancel this Agreement at any time by providing 60 days written notice to the other party. Notwithstanding the foregoing, either party hereto may terminate the Agreement in the event the other party hereto defaults in the performance of the obligations hereunder and fails to cure the default within ten (10) business days after receipt of written notice specifying the said default.

ARTICLE EIGHT

Books and Records

- 8.1 Each party shall maintain copies of reports, plans, budgets and other records developed in connection with the performance of its obligation herein. Such materials shall be open to inspection by either party at any time upon reasonable notice to the other party.
- 8.2 Notwithstanding the foregoing, nothing contained herein shall be construed as providing the College or any governmental agency or department, or the general public, with any right of access to any other books, records or documents of the Foundation. Each party acknowledges that the Foundation is a supporting organization as defined in the Internal Revenue Code, and is not, and shall not be construed as, either a public or quasi-public entity, department or agency of the State of Arizona or the College and, accordingly, shall not be required to observe or perform the rules, regulations, laws or policies or procedures which are imposed upon public agencies or departments, nor provide any right of access to records to the public with respect to any records of the Foundation.

ARTICLE NINE

Notices

- 9.1 All notices and other communications desired or required to be given hereunder shall be in writing and shall be sent by either personal delivery or registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Foundation: Coconino Community College Foundation
Attn: Executive Director of Institutional Advancement
2800 S. Lone Tree Rd.
Flagstaff, AZ 86001-2701

If to the College: Coconino Community College
 Attn: College President
 2800 S. Lone Tree Rd.
 Flagstaff, AZ 86001-2701

ARTICLE TEN
Miscellaneous Provisions

- 10.1 This Agreement contains all of the agreements and understandings between the parties hereto with respect to the subject matter hereof, and no representations, covenants, agreements or commitments have been made to, or relied upon by, either of the parties hereto, which are not specifically set forth herein.
- 10.2 This Agreement may not be amended, modified, supplemented or altered except by an instrument in writing executed by both of the parties hereto.
- 10.3 The captions of articles and paragraphs hereof are for reference and convenience only and shall not be deemed to limit, construe or affect the meaning of such articles or paragraphs.
- 10.4 This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Arizona, both statutory and decisional.
- 10.5 If any provision of this Agreement or the application thereof to any party hereto or under any circumstances shall in any way be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement, and the application of such provision to the other party hereto or under circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable laws.
- 10.6 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 10.7 This Agreement, and the rights and benefits of the parties hereto hereunder, may not be assigned in whole or in part without the prior consent of the other party hereto.

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10.8 This Agreement may be cancelled by the College for conflict of interest pursuant to A.R.S. §38-511.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

**Coconino County Community College Foundation
An Arizona Non-Profit Corporation**




Kevin Stephens, President

1/25/13

Date

**Coconino County Community College District
A Political Subdivision of the State of Arizona**



Dr. Leah L. Bornstein, President

1/29/13

Date