



FOUNDATION *for* CALIFORNIA
COMMUNITY COLLEGES

MANAGEMENT SERVICES AGREEMENT

between

THE FOUNDATION FOR CALIFORNIA COMMUNITY COLLEGES

and

THE STUDENT SENATE FOR CALIFORNIA COMMUNITY COLLEGES

Agreement No. SEN-000-17

This is a Management Services Agreement ("Agreement") between the Foundation for California Community Colleges ("Foundation") and the Student Senate for California Community Colleges ("SSCCC").

WHEREAS, the Foundation is a nonprofit 501(c)(3) corporation and the official nonprofit supporting the California Community College Chancellor's Office ("CCCCO") and the Board of Governors of the California Community Colleges ("BOG"), and its mission is to benefit, support and enhance the California Community College System;

WHEREAS, the SSCCC is a nonprofit 501(c)(3) corporation that represents the students of the California Community College System in state-level shared governance and legislative advocacy, and the purpose of the SSCCC is to fulfill responsibilities regarding student representation, collaboration, accountability, communication and strategic advocacy;

WHEREAS, the SSCCC entered into a Memorandum of Understanding with the CCCCCO ("MOU"), attached hereto as "Exhibit A" and is hereby incorporated by reference, to authorize the SSCCC to operate as the official statewide community college student organization, recognized by the BOG, pursuant to California Education Code Section 76060.5, to establish the nature of the working relationship between the CCCCCO and SSCCC, and the terms and conditions which the SSCCC must fulfill in order to meet the obligations and goals expressed in California Education Code Section 76060.5, subsection (c); and

WHEREAS, the MOU requires SSCCC to engage with an external management consultant to provide professional management services and SSCCC desires Foundation to provide these professional management services in accordance with the MOU.

WHEREAS, the scope of professional managerial services contemplated herein include all sources of income to the SSCCC, including but not limited to: student representation fees, conference fees, and donations.

NOW, THEREFORE, the parties agree to the terms and conditions contained in this Agreement, outlining the relationship between Foundation and SSCCC for the term and with respect to the subject matter herein, as follows:

1. **Effective Date and Authority to Execute:** This Agreement shall be effective July 1, 2017 ("Effective Date"). The signatories below and their respective parties each represent and warrant that they are authorized to sign this Agreement on behalf of their respective organizations.
2. **Term:** The term of this Agreement shall mirror the term of the MOU between SSCCC and CCCCC ("Exhibit A"), or until terminated as described in Sections 6 and 7 below. While the Effective Date of this Agreement may be later than the Effective Date of the MOU, the end date of this Agreement shall match that of the MOU. The terms of this Agreement shall be reviewed on a not less than annual basis by the Foundation and SSCCC to re-assess the scope of Services, Management Fee, and to ensure that expectations of all parties related to the Services provided herein are addressed.
3. **Services:**

- A. **Introductory/Start-up Services:** The following Introductory/Start-up Services will commence on the Effective Date of this Agreement and shall continue until the Foundation, in its sole discretion, determines that the SSCCC has the appropriate level of foundational policies and procedures to move into the "Ongoing Services" period.

Phase I: The initial phase of the Introductory/Start-up Services will comprise of a limited scope of services with the purpose of assisting the SSCCC in accessing enough Student Representation Fees ("SRF")s to support a sustainable annual budget, and will include the following activities:

- Conduct initial onboarding planning meeting with key SSCCC and CCCCC leadership
- Assist SSCCC leadership in development of marketing and communications tools to facilitate adoption of the revised (two-dollar) SRF model throughout the California Community College system
- Assist SSCCC leadership, in collaboration with the CCCCC, to educate SSCCC and student leadership at the colleges on how to ensure SRFs are properly collected and reported by the college districts
- Develop guiding principles, processes and means of creating an annual SSCCC budget in compliance with fiscal eligibility requirements to obtain SRFs held by CCCCC
- Develop initial SSCCC budget and establish required fiscal eligibility requirements to obtain SRFs held by CCCCC
- Create a position description for an SSCCC Executive Director in collaboration with SSCCC and CCCCC
- Review and/or establish appropriate insurance policies

Phase II: The second phase of the Introductory/Start-up Services will commence once the CCCCC confirms SRFs total at least \$200,000 on an annual basis, or as otherwise unanimously agreed by the Foundation, SSCCC, and CCCCC. This phase expands the scope of services to continue the work initiated in Phase I and adds the following activities related hiring of a SSCCC Executive Director and internal policy and process development:

- Set up financial accounting system for fiscal management, accounting, book keeping and financial reporting
- Establish SSCCC cash management processes and procedures

- Develop, in collaboration with SSCCC and CCCCCO, internal policies and processes related to finance, internal controls, contracts, and human resources in conformity with existing Foundation policies and processes
- Review and advise on SSCCC Articles and Bylaws
- Conduct an impartial and transparent search for an SSCCC Executive Director
- Contract with a third party to serve as the SSCCC Interim Executive Director, until funds support a full-time staff person
- Ensure launch of the SSCCC website migration and development

B. Ongoing Services: The following Ongoing Services will commence once the Foundation, in its sole discretion, determines that the Introductory/Start-up Services are substantially complete. Activities started in the Introductory/Start-up Services may continue into occur during the "Ongoing Services" period.

- Conduct regular partnership check-in meetings with key SSCCC and CCCCCO leadership at least on an annual basis or upon the election of SSCCC key leadership.
- Full service fiscal management, accounting, book keeping and financial reporting
- Treasury services/cash management/accounts receivable/payable
- Act as employer of record for all SSCCC personnel, if any
- Assist SSCCC in the process of conducting annual performance reviews of all SSCCC personnel, if any
- Staff timekeeping and analysis of hours for multiple purposes (Form 990 Tax Return and against grants/contracts)
- Monitoring and reporting consultant contract compliance
- Annual audit support services
- Annual Form 990 tax return support services
- Contract management
- Basic risk management services (i.e. insurance and compliance)
- Staff recruitment and on-boarding
- Human resources support services
- IT support
- Receipt of mail related to the Ongoing Services
- Review and advise on any appreciable changes/amendments that have occurred or may occur to SSCCC internal policies and processes related to finance, internal controls, contracts, and human resources

C. Additional Services (if available and for an additional fee):

- Website development and maintenance
- Marketing, creative design and branding
- External relations
- Computer programming and support
- Call center and bilingual call answering
- Endowment management
- Program planning
- Program implementation
- Administrative services
- Office space
- Management of outside legal counsel

4. Management Fee:

- A. For the performance of its Introductory/Start-up Services described herein, the Foundation shall be compensated a fee equal to \$2,000 per month during Phase I, and \$4,000 per month during Phase II, in addition to any incremental direct costs.
- B. For the performance of its Ongoing Services described herein, the Foundation shall be compensated in an amount equal to 15% of SSCCC's total expenditures.
- C. If the performance of Ongoing Services described herein requires the addition of dedicated personnel to complete required tasks, the Foundation shall be compensated in an amount equal to the actual costs of such personnel.
- D. The Foundation shall be compensated, at a mutually agreed upon rate or fee, for any Additional Services SSCCC may solicit from the Foundation.
- E. Prior to the start of any Additional Services, SSCCC's Board President, Executive Director, and the relevant Foundation staff must agree in writing to a scope of work and budget for the Additional Services. That writing must be provided to the Foundation's Finance and Legal/Contracts departments prior to start of work.

All management fees and any additional charges will be deducted directly from SSCCC's account, which is managed by the Foundation pursuant to this agreement. Foundation will provide SSCCC an internal invoice memorializing each monthly deduction. Upon termination of this Agreement, Foundation shall deduct all management fees and any additional charges accrued up to and including the date of termination.

5. SSCCC's Responsibilities:

- A. SSCCC shall strive to collect and maintain a minimum of \$200,000 in SRFs on an annual basis.
- B. SSCCC shall be responsible for complying with all applicable federal, state and local laws, regulations and restrictions in the conduct of their obligations under this Agreement.
- C. SSCCC shall fully disclose all circumstances that currently exist or that could arise during the term of this Agreement that could be (or could cause) a conflict of interest between the respective interests of Foundation and SSCCC.
- D. SSCCC agrees to provide Foundation with all relevant information and documents to assist Foundation with the performance of services under this Agreement in a timely manner.
- E. SSCCC agrees to satisfy all of Foundation's reasonable requests for assistance in its performance of the services in a timely manner.
- F. SSCCC shall notify Foundation of any changes to its procedures affecting Foundation's obligations under this Agreement at least thirty (30) days prior to implementing such changes.
- G. Throughout the Term of this Agreement, SSCCC must be an established legal entity, registered with the California Secretary of State and in good standing with the Internal Revenue Service and Franchise Tax Board as a valid 501(c)(3) non-profit organization. SSCCC shall be liable and responsible for any fees, including registration fees, with the Internal Revenue Service and Franchise Tax Board.

- H. Pursuant to this Agreement and the SSSCC's MOU with CCCCCO, SSSCC is required to develop and maintain a Code of Conduct for enforcing CCC-referred and participant violations. Pursuant to the MOU, SSSCC must report any violations of the Code of Conduct. SSSCC shall also report all violations of the Code of Conduct to the Foundation. Further, SSSCC shall notify the Foundation if SSSCC is subject to any disciplinary process by CCCCCO due to their failure to follow the Code of Conduct Violation Procedures.
 - I. SSSCC shall comply with all established internal controls over its financial reporting.
 - J. SSSCC must work with Foundation to establish their own appropriate personnel policies and procedures, including recruitment, evaluation, compensation, and termination processes, as approved by the Foundation and the CCCCCO, prior to the direct hire of any SSSCC employee.
 - K. Pursuant to the MOU between SSSCC and CCCCCO, an independent certified Public Accountant shall be retained by the Foundation and paid by SSSCC to annually audit all SSSCC funds.
 - L. SSSCC shall work with Foundation to establish an annual budget of anticipated revenues and expenditures for each July 1 – June 30 annual reporting period. Such budget must be in sufficient detail to present the primary anticipated expenditures of the organization over the twelve-month period, and must generate positive net income reserves equal to at least 10% of annual revenue per year. At a minimum, the budget must be sufficient to cover required expenses as more fully described in the MOU, such as: Management Services, Insurance, Audit, Executive Director, and other costs required to meet the terms of the MOU. All budgets must be approved by CCCCCO and the Foundation
 - M. SSSCC will contract with an Executive Director, through the Foundation, to assume leadership, communication, management, and planning responsibilities for SSSCC. The Foundation, along with CCCCCO will assist SSSCC in creating a position description that will address their needs. During the initial start-up phase of operations, the Executive Director will be phased-in on a part-time basis as an independent contractor of the Foundation, employee of the Foundation, or in another legally acceptable manner as approved by the Foundation. CCCCCO, the Foundation, and the SSSCC shall have the right to review the performance of the Executive Director and initiate termination proceedings in accordance with Foundation policies and procedures.
 - N. A Senior Advisory Group shall be created and remain in place throughout the Term of this agreement to help SSSCC with any matters regarding nonprofit and corporate governance and operations. Foundation CEO, or her designee, will be a member of the Senior Advisory Committee.
 - O. The SSSCC Board President, SSSCC Executive Director, and Foundation CEO or her designee will conduct a check-in meeting on a no less than monthly basis.
6. **Termination for Cause:** Either party may terminate this Agreement for cause as follows:
- A. In the event the MOU between SSSCC and CCCCCO is terminated, Foundation may terminate this Agreement without further notice.
 - B. In the event SSSCC is found to be in material breach of their MOU with CCCCCO.
 - C. In the event either party materially defaults in the performance of any duty or obligation imposed upon it by this Agreement and such default shall continue for a period of thirty (30) days after

written notice thereof has been given to the defaulting party by the non-defaulting party, the non-defaulting party may terminate this Agreement without further notice.

- D. In the event of the filing of a petition in voluntary bankruptcy or an assignment for the benefit of creditors by either party, or upon other action taken or suffered, voluntarily or involuntarily, under any federal or state law for the benefit of debtors of that party, except for the filing of a petition in involuntary bankruptcy by a party that is dismissed within thirty (30) days thereafter.
- E. In the event of either party's failure to maintain insurance in compliance with Section 11 below.
7. **Termination for Convenience:** Either party may terminate this Agreement without cause by providing the other party thirty (30) days advance written and signed notice by the authorized representative of each party, of its intention to terminate this Agreement.
8. **Work for Hire:** Foundation expressly acknowledges and agrees that any work prepared by Foundation under this Agreement shall be considered "work for hire" and the exclusive property of the SSCCC unless otherwise specified. To the extent such work may not be deemed a "work for hire" under applicable law, Foundation hereby assigns SSCCC all of its right, title, and interest in and to such work. Foundation shall execute and deliver to SSCCC any instruments of transfer and take such other action that SSCCC may reasonably request, including, without limitation, executing and filing, at SSCCC's expense, copyright applications, assignments, and other documents required for the protection of SSCCC's rights to such materials.
9. **Return of Property:** Within thirty (30) days of the termination of this Agreement, whether by expiration or otherwise, Foundation agrees to return to SSCCC all SSCCC products, samples, models, or other property and all documents, retaining no copies or notes, relating to SSCCC's business including, but not limited to, reports, abstracts, lists, correspondence, information, computer files, computer disks, and all other materials and all copies of such material obtained by Foundation during and in connection with its representation of SSCCC. All files, records, documents, blueprints, specifications, information, letters, notes, media lists, original artwork/creative, notebooks, and similar items relating to SSCCC's business, whether prepared by Foundation or otherwise coming into its possession, shall remain SSCCC's exclusive property; provided, however, that title and ownership in and to Foundation's work that does not constitute work product relating to the Services shall remain and belong to and be vested in Foundation.
10. **Relationship of Parties:** Nothing herein shall be construed to create a joint venture or partnership between the parties hereto or an employee/employer relationship. Neither party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement or undertaking with any third party. Nothing in this Agreement shall be deemed or construed to enlarge the fiduciary duties and responsibilities, if any, of the Foundation or any of its Related Parties.
11. **Insurance:** Both parties, at their sole cost and expense, will obtain, keep in force, and maintain insurance as listed below. Coverage required will not limit any liability of the parties and will include:
- A. Commercial general liability insurance with a combined single limit of no less than \$1 million per occurrence. SSCCC's commercial general liability policy shall name Foundation, its directors, officers, and employees as Additional Insureds;
- B. Automobile liability insurance for all owned, scheduled, or hired automobiles with a combined single limit of no less than \$1 million per accident;

- C. Professional Liability covering liability arising from any error, omission, negligent or wrongful act of the party, its officers or employees with limits of not less than \$1 million per occurrence and \$2 million aggregate; and
- D. Workers' compensation as required under the Workers' Compensation and Safety Act of the State of California, as amended from time to time.

Insurances required by this Agreement shall contain a thirty (30) day notice of cancellation provision. The parties shall transmit all certificates of insurance, including the additional insured endorsement, to the other party, within fifteen (15) days of execution of this Agreement. Any failure of the parties to require Certificates of Insurance and Additional Insured endorsements shall not operate as a waiver of these requirements.

12. Disclaimer; Limitation of Liability

- A. **Disclaimer.** The Foundation makes no representations or warranties, express or implied, in respect of the Services to be provided by it hereunder.
- B. **Limitation of Liability.** Neither the Foundation nor any of its officers, directors, managers, principals, stockholders, partners, members, employees, agents, representatives and Affiliates (each a "Related Party" and, collectively, the "Related Parties") shall be liable to the SSCCC or any of its Affiliates for any loss, liability, damage or expense arising out of or in connection with the performance of any Services contemplated by this Agreement, unless such loss, liability, damage or expense shall be proven to result directly from the willful misconduct of such person. In no event will the Foundation or any of its Related Parties be liable to SSCCC for special, indirect, punitive or consequential damages, including, without limitation, loss of profits or lost business, even if the Foundation has been advised of the possibility of such damages. Under no circumstances will the liability of the Foundation and Related Parties exceed, in the aggregate, the fees actually paid to the Foundation hereunder

13. **Indemnification:** The parties agree to defend, indemnify and hold one another harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising from the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the indemnifying party, its officers, agents or employees.

14. **No Actions Inconsistent with Tax Exempt Status:** Neither party may engage in any attempt to influence legislation within any meaning of the Internal Revenue Code (IRC) Section 501(c)(3) that would jeopardize the other party's tax-exempt status. Both parties agree not to use funds or engage in any activities which would jeopardize the tax-exempt status of the other party in any way.

15. Contacts:

Foundation – Service-Related Issues/Notices	SSCCC – Service-Related Issues/Notices
Advancement Department	Current President and/or Executive Director
Foundation for California Community Colleges	Student Senate for California Community Colleges
1102 Q Street, Suite 4800	1102 Q Street, 6 th Floor
Sacramento, CA 95811	Sacramento, CA 95811
Phone: (916) 325-4300	
Email: fiscalsponsorships@foundationccc.org	Email: president@studentsenateccc.org

Foundation – Contract-Related Issues/Notices	SSCCC – Contract-Related Issues/Notices
Contracts Department	(same as above)
Foundation for California Community Colleges	
1102 Q Street, Suite 4800	
Sacramento, CA 95811	
Phone: (916) 325-4300	
Email: contracts@foundationccc.org	

16. General Terms:

- A. Captions and Interpretation:** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. Paragraph headings shall not be deemed to define, limit or extend the scope or intent of the paragraphs to which they appertain.
- B. Assignment and Delegation:** This Agreement may not be assigned or otherwise transferred by either party without the prior written consent of the other party; however, either party will have the right to assign its rights and obligations under this Agreement in connection with a merger, acquisition, or sale transfer of substantially all of its assets.
- C. Entire Agreement:** This Agreement 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 Foundation and the SSCCC regarding such subject matter. This Agreement specifically replaces the previous agreement between the Foundation and the SSCCC regarding Foundation's provision of financial services to the SSCCC, which became fully-executed on January 26, 2010.
- D. Modification of Agreement:** This Agreement may be modified only by a written agreement dated subsequent to the effective date and signed by authorized representatives of each party. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.
- E. Law to Govern; Venue:** This Agreement shall be interpreted, governed and construed in accordance with the internal substantive laws of the State of California. Any dispute or claim arising from this Agreement shall be resolved in a state or federal court in Sacramento, California. The parties specifically submit to the personal jurisdiction and subject matter jurisdiction of the state and federal courts located in Sacramento, California.
- F. Time of the Essence:** Time is of the essence with respect to all provisions of this Agreement.
- G. Construction of Agreement:** Both parties have participated in the negotiation and drafting of this Agreement. Therefore, the terms and conditions of this Agreement shall not be construed against either party as the drafting party.
- II. Confidentiality:** The parties shall not, directly or indirectly, use, make available, sell, disclose or otherwise communicate to any third party, other than in the party's assigned duties and for the benefit of the non-disclosing party, any of the non-disclosing party's Confidential Information, either during or after this Agreement. Subject to applicable federal, state and local law, including but not limited to the Richard McKee Transparency Act of 2011, Confidential Information is to be broadly defined, and includes but may not be limited to all information that has or could have commercial value or other utility in the business in which the non-disclosing party is engaged or contemplates engaging, and all



information of which the unauthorized disclosure could be detrimental to the interests of the non-disclosing party, whether or not such information is identified as Confidential Information by the non-disclosing party. This paragraph shall survive the expiration or early termination of this Agreement.

- I. Execution of this Agreement:** The parties agree that this Agreement 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 or facsimile may serve as an original. If this Agreement is executed in counterparts, no signatory hereto shall be bound until both the parties have fully executed a counterpart of this Agreement.
- J. Severability:** If any part of this Agreement is found invalid or unenforceable, that part will be amended to achieve as nearly as possible, the same economic effect as the original provision and the remainder of this Agreement will remain in full force and effect.
- K. Non-waiver:** The failure of either Foundation or the SSCCC, whether purposeful or otherwise, to exercise in any instance any right, power or privilege (including but not limited to waiver) under this Agreement or under law of this Agreement shall not constitute a waiver of any other right, power or privilege, nor of the same right, power or privilege in any other instance. Any waiver must be in writing.
- L. Authority to Bind:** The parties each represent and warrant that the signatories below are authorized to sign this Agreement on behalf of themselves or the party on whose behalf they execute this Partnership Agreement. For the Foundation, only signatories designated by the Foundation's Contracts Policy have the authority to enter into contracts on the Foundation's behalf.
- M. Survival:** Sections 4, 5, 8, 9, 10, 11, 12, 13, 14, and 16 of this Agreement shall survive Termination of this Agreement.
- N. Force Majeure:** Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, terrorism, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of the parties.
- O. Dispute Resolution:** If a dispute arises from or relates to this Agreement or the breach thereof, and if the dispute cannot be settled through direct discussions, the parties agree to endeavor first to settle the dispute by mediation facilitated by the CCCC. If the dispute cannot be resolved through mediation facilitated by the CCCC, the parties agree to endeavor to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration. The parties further agree that any unresolved controversy or claim arising out of or relating to this contract, or breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

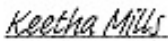

Signature Page to Follow

THE PARTIES HEREBY EXECUTE THIS AGREEMENT.

**STUDENT SENATE FOR CALIFORNIA COMMUNITY COLLEGES
(SSCCC)**

	President	Jun 19, 2017
Signature		Date
	Vice President of Finance	Jun 20, 2017
Signature		Date

**FOUNDATION FOR CALIFORNIA COMMUNITY COLLEGES
(FOUNDATION)**

 <small>Keetha Mills (Jun 20, 2017)</small>	PPresident and CEO	Jun 20, 2017
Signature		Date
	Chief Operating Officer	Jun 20, 2017
Signature		Date