



FOUNDATION *for* CALIFORNIA
COMMUNITY COLLEGES

FISCAL SPONSORSHIP

MEMORANDUM OF UNDERSTANDING

between

FOUNDATION FOR CALIFORNIA COMMUNITY COLLEGES

and

CALIFORNIA AFTERSCHOOL NETWORK

Agreement No. FS-045-15

This is a Memorandum of Understanding (MOU) between the Foundation for California Community Colleges (Foundation) and the California AfterSchool Network (CAN).

WHEREAS, Foundation is a nonprofit 501(c)(3) corporation and the official nonprofit supporting the California Community College 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, CAN is an unassociated group, led by a Leadership Team, that provides out-of-school time practitioners, advocates, and community members with the resources and tools necessary to build high quality out-of-school time opportunities that enable youth to maximize their potential (Project);

WHEREAS, Mary Jo Ginty and Frank Escobar (Leadership Team Co-Chairs) have the authority to enter this MOU on behalf of CAN;

WHEREAS, CAN is responsible for securing funds to support the Project (Sponsored Funds) and desires to have Foundation act as a fiscal sponsor for the Sponsored Funds.

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

1. **Effective Date and Term:** This MOU shall commence when it becomes fully executed by the parties (Effective Date), and shall remain in effect until all Sponsored Funds have been properly expended and all terms and conditions have been satisfied or until terminated in accordance with the provisions of this MOU (Term).

2. Responsibilities:

A. CAN's Responsibilities:

- i. CAN will not carry out any other activities or exercise any powers that are not in furtherance of its primary charitable purpose.
- ii. CAN, with the administrative assistance of the Foundation, will use all Sponsored Funds in a fiscally prudent manner, in accordance with their stated purpose(s) and in furtherance of the Project.
- iii. CAN agrees not to use Sponsored Funds and/or funds received from the Foundation in any way which would jeopardize the tax-exempt status of the Foundation. CAN agrees to comply with any written request by the Foundation that it cease activities which might jeopardize the Foundation's tax status, and further agrees that the Foundation's obligation to make funds available to it is suspended in the event that it fails to comply with any such request.
- iv. Any changes in the primary purpose for which the Sponsored Funds are spent must be approved in writing by the Foundation's Primary Contact, or his or her designee, before implementation. The Foundation retains the right, if CAN breaches this MOU, or if CAN jeopardizes the Foundation's legal or tax status, to withhold, withdraw, or demand immediate return of funds from CAN. Foundation must be notified if there are proposed change of deliverables in any grant or contract before they can be accepted by CAN's Leadership Team.
- v. At all times during this MOU, CAN shall be considered to be represented by the Foundation as its fiscal sponsor and only as it relates to the Sponsored Funds.
- vi. All contracts related to the Foundation and/or the use of Sponsored Funds must be in writing and comply with the Foundation's Contract Policies and Procedures. CAN agrees to refrain from entering into any contracts on behalf of the Foundation and/or for use of Sponsored Funds without prior consultation with and approval of the Foundation's Primary Contact, or his or her designee, and the Foundation's Legal Department.
- vii. CAN shall submit to the Foundation's Primary Contact, or his or her designee, for prior approval, a copy of all written material that identifies the Foundation as the fiscal sponsor for CAN, and any other written material that identifies the Foundation. Additionally, CAN shall obtain approval from the Foundation's Primary Contact, or his or her designee, prior to sharing any written materials related to the Foundation and/or the Sponsored Funds, including but not limited to, financial reports.
- viii. CAN shall submit to the Foundation's Primary Contact, or his or her designee, for prior approval, all required donor or grantor reports, including, but not limited to, narrative progress updates, financials, and/or budgets at least 30 days prior to grantor submission due date.
- ix. CAN acknowledges that it is responsible for the proper adherence to all stated grantor requirements. CAN is responsible for the compilation and timely submission of all required progress reporting and final grant reporting, including narrative reports and financial reporting. CAN acknowledges that, in the event of untimely grant reporting by CAN, the Foundation may compile such reports on behalf of CAN for an additional fee calculated based on actual staff time incurred to compile such reports.
- x. CAN shall submit to the Foundation's Primary Contact, or his or her designee, for prior approval, a copy of all acknowledgements to donors or grantors. Both parties may agree upon and approve standard acknowledgement language that may be used without further approval from the Foundation's Primary Contact, or his or her designee. In such case, CAN shall submit copies of

all such correspondence to the Foundation's Primary Contact, or his or her designee, for monitoring and file purposes.

- xi. CAN authorizes the Foundation to make expenditures, in accordance with a specified grant budget, which do not exceed total Sponsored Funds received for a specified grant purpose.
- xii. CAN agrees to adhere to all Foundation policies and procedures and internal controls surrounding its expenditure processes.
- xiii. CAN shall not exceed the Sponsored Funds allocated within a specified grant. CAN may not reallocate grant budget line items without prior notice to the Foundation's Primary Contact, or his or her designee. CAN agrees to coordinate with the Foundation's Primary Contact, or his or her designee, on determining and adhering to grantor required communications and amendments for all budget variances.
- xiv. All personnel who are hired under any agreement/contract, and financed by Sponsored Funds, to carry out the purposes of the Project will be considered employees or independent contractors, as applicable, of the Foundation. All employees shall be "at-will" employees and subject to the same personnel policies and benefits that apply to all employees of the Foundation. All independent contractors that supervise Foundation employees must acknowledge, in writing, their understanding that the employees they supervise are subject to the Foundation's personnel policies.
- xv. All personnel who are hired pursuant to section xiv above agree to adhere to the Foundation's accounting policies and procedures and other corporate policies and procedures as provided, in writing, by the Foundation.

B. Foundation's Responsibilities:

- i. Foundation agrees to receive tax-deductible grants, gifts and contributions for the benefit of CAN and to be used for the Project, and to make those funds available accordingly.
- ii. Foundation in its sole discretion has the final authority and consent concerning solicitation and receipt of Sponsored Funds. Foundation agrees that such consent shall not be unreasonably withheld.
- iii. Foundation will review and approve all donor solicitations, acknowledgments to donors, and all required reports to donors in a timely manner to ensure expedient donor communication and reporting.
- iv. Foundation will receive and administer all Sponsored Funds, including earned revenue, which CAN will use for the Project. Foundation agrees to process all requested expenditures, deemed proper for the benefit of CAN and the Project, in a timely manner.
- v. Foundation will include all funds received and expenditures made for the Project on its Form 990 tax returns.
- vi. Foundation will maintain books and financial records of CAN, with respect to the Sponsored Funds only, in accordance with generally accepted accounting principles. The financial records of CAN for the Sponsored Funds will be segregated for departmental reporting purposes and consolidated with the financial records of the Foundation. All such books and records remain the property of the Foundation. In the event of termination, Foundation will make a copy of all such books and records available to CAN, at CAN's sole expense, and in a format mutually acceptable to the parties.

- vii. Foundation will provide reports reflecting the overall financial position and financial activity of CAN for the Sponsored Funds on a monthly basis within 3 weeks after the end of each month, and on an annual basis, within 90 days after the end of each fiscal year of the Foundation.
 - viii. Foundation, in consultation with the Leadership Team Co-Chair(s) or designee, shall have the authority to select, employ, and/or enter into consultant contracts and other agreements with, and supervise all persons who perform compensated services on behalf of CAN and in connection with the Sponsored Funds, on such terms and conditions as are consistent with the budget and other requirements of the Sponsored Funds. All such persons shall be classified as employees or independent contractors (in accordance with IRS guidelines) of the Foundation, and the Foundation shall be responsible for all income and payroll tax withholding and reporting and the issuance of all 1099 reporting.
 - ix. Foundation agrees to make available to all personnel, who are hired under any agreement/contract, and financed by Sponsored Funds, to carry out the purposes of the Project, in writing, all personnel policies, accounting policies and procedures, and other corporate policies and procedures related to the fiscal sponsor services provided by the Foundation.
 - x. Foundation will not enter into any contracts on behalf of CAN without prior consultation with and approval of the Leadership Team Co-Chair(s) or designee. All contracts related to the Sponsored Funds, or the Foundation, must be in writing and comply with the Foundation's Contract Policies and Procedures. Additionally, all contracts related to CAN and in connection with the Sponsored Funds must be signed by both of the Leadership Team Co-Chair(s) or designee.
 - xi. Foundation agrees to provide CAN with office occupancy privileges, including: a furnished office suitable for two people plus a cubicle, storage and associated utilities and amenities; three dedicated telephone land lines; online access for CAN computer(s); email; and information technology support. Additional occupancy costs, such as use of copiers, are not included in the fee structure set in Section 4 below and will be charged at actual cost or negotiated, and will be billed separately.
 - xii. Foundation agrees to provide one Foundation representative, generally the Foundation Primary Contact or his or her designee, for participation on CAN's Leadership Team on a quarterly basis and periodically, as agreed to by the parties.
 - xiii. CAN's Leadership Team Co-Chair(s) will be provided with a copy of the Foundation's employee-related policies and all other documents that are outlined in this MOU that CAN must adhere to and will be notified of any changes to these prior to the effective date of the change. Additionally, CAN's Leadership Team Co-Chair(s) will be notified of changes in benefits packages and/or rates for such benefits prior to the effective date of such changes.
3. **Termination:** Either party may terminate this agreement with 120 days written notice to the other party for any reason. In such event, and as of the termination date, no further obligation shall be incurred by either party related to this agreement. On receipt of the written notice, both parties must cease or reduce work as required by the notice and take all steps possible to mitigate losses. Any funds pending to be distributed that remain unexpended on the date of termination shall be dispersed as negotiated by both parties, and specified in writing, within the 120 day notice period. In the event of termination, equipment and supplies purchased with Sponsored Funds shall be retained by or returned to CAN, except in instances in which Section 2.A.iv, above, applies. Unless otherwise agreed in writing by both parties or required by the terms of a contribution grant or gift, the Foundation shall retain any and all remaining Sponsored Funds and distribute them in accordance with its tax-exempt purpose.

4. **Fees:**

- A. For the performance of its fiscal sponsor services described above in section 2.B (Foundation's Responsibilities), the Foundation shall be reimbursed in an amount equal to twenty percent (20%) of gross expenses incurred by the Project through a combination of direct or indirect costs. It is further agreed that if grant funders have policies that do not support the fee of twenty percent (20%) the Foundation will receive a minimum of fifteen percent (15%) through a combination of direct and indirect costs.
- B. Foundation shall be reimbursed, at a mutually agreed upon rate or fee, for the services described above in section 2.B (Foundation's Responsibilities) for any other services CAN may solicit from the Foundation (marketing, communications, enhanced IT support, etc.).
- C. Foundation shall be reimbursed for the actual fringe benefit costs incurred associated with employing personnel for the purpose of the Project. Foundation benefit costs are approximately 35% of the employee's hourly wage or salary. Foundation shall deduct said reimbursements from Sponsored Funds as such services are rendered by the Foundation.
- D. Further, the Foundation shall be reimbursed for any increase in its out-of-pocket costs attributable to the performance of its fiscal sponsor services, e.g. increased insurance costs to cover CAN activities or increased audit costs for an audit of Sponsored Funds. Any such increase will be communicated, in writing, to CAN within 30 days of such increase.

5. **Assignment:** Foundation will not assign any of its obligations or duties under this MOU without prior written consent of CAN, which consent shall not be unreasonably withheld. CAN shall not assign any of its duties or obligations under this MOU or under any grant of Sponsored Funds without the prior written consent of the Foundation, which consent may be withheld in the Foundation's discretion.

6. **Indemnification:**

- A. Each party to this MOU ("Indemnitor") agrees to indemnify, defend and hold harmless the other, and its directors, trustees, officers, employees, agents (collectively "Indemnitees") against any and all liability, claims, demands, suits, losses, costs, legal fees including reasonable attorneys' fees, personal injury or illness and/or death, resulting from, arising out of, or connected with (a) Indemnitor's performance or omissions related to same under this MOU; (b) any breach by Indemnitor of this MOU.
- B. It is the intention of the parties that where the fault of Foundation and CAN are determined to have been contributory to a matter subject to this indemnity provision, principles of comparative fault shall be followed and each party shall bear the proportionate cost of any defense and damage attributable to the fault of that party, its officers, directors, agents, employees, subcontractors, and volunteers.
- C. The Indemnitee must approve the extension of all settlement offers proposed by the Indemnitor and Indemnitee's approval shall not be unreasonably withheld. The Indemnitor shall furnish Indemnitees with all related evidence in its control.
- D. Nothing in this MOU shall constitute a waiver of limitation of any rights which Indemnitees may have under applicable law, including without limitation, the right to implied indemnity.

7. **Contacts:**

<u>Foundation</u>	<u>CAN</u>
<u>Primary Contact</u>	<u>Leadership Team Co-Chairs</u>
Barbara Webster-Hawkins, Grants Development Director	Mary Jo Ginty
1102 Q Street, Suite 3500	Ginty_MaryJo@lacoed.edu
Sacramento, CA 95811	Frank Escobar
Phone: (916) 325-0117	fescobar@visalia.k12.ca.us
bwebster-hawkins@foundationccc.org	
<u>Legal Department</u>	<u>Executive Director</u>
Contracts Department	TBD
1102 Q Street, Suite 3500	
Sacramento, CA 95811	
Phone: (916) 325-4300	
contracts@foundationccc.org	

8. **General Terms and Conditions**

- A. This 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 Foundation and CAN regarding such subject matter.
- B. This MOU is the product of joint collaboration and drafting by authorized representatives of both Foundation and CAN. Therefore, an interpretation of any term or condition contained herein shall not be construed against either party as the drafting party.
- C. If any part of this 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 MOU will remain in full force and effect.
- D. Paragraph headings in this MOU are used solely for convenience, and shall be wholly disregarded in the construction of this MOU. Paragraph headings shall not be deemed to define, limit or extend the scope or intent of the paragraphs to which they appertain.
- E. The Parties agree that this 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 MOU is executed in counterparts, no signatory hereto shall be bound until both the parties have fully executed a counterpart of this MOU.
- F. 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.
- G. This MOU 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.

THE PARTIES HEREBY EXECUTE THIS AGREEMENT.

CALIFORNIA AFTERSCHOOL NETWORK (CAN)

Mary JO Ginty
Mary JO Ginty (May 28, 2015)

Signature

May 28, 2015

Date

Frank Escobar
Frank Escobar (May 28, 2015)

Signature

May 28, 2015

Date

FOUNDATION FOR CALIFORNIA COMMUNITY COLLEGE (FOUNDATION)

John OSullivan
John OSullivan (May 28, 2015)

Signature

May 28, 2015

Date

Melissa Conner
Melissa Conner (May 28, 2015)

Signature

May 28, 2015

Date