

**PIMA COUNTY COMMUNITY COLLEGE DISTRICT
GOVERNING BOARD OPEN MEETING NOTICE AND AGENDA
October 2, 2017**

NOTICE OF STUDY SESSION

4:00 p.m.
District Office
Building C Room 105
4905 E. Broadway Blvd.
Tucson, AZ 85709-1005

AGENDA FOR MEETING*

1. Call Meeting to Order

2. PCC Foundation

*[The discussion of current status and proposed expansion of fundraising and development activities; options for restructuring the development roles and responsibilities of the College and PCC Foundation.]

[Presentation](#) [PCC Foundation Consultant Report](#)

[PCC Foundation Services Agreement-Draft](#)

3. Board Meeting Procedures

*[Review of bylaws and Robert's Rules of Order on meeting procedure; discussion of procedural rules for governing board meetings.]

[Presentation](#) [Board Meeting Rules Recommendations](#)

***4. Pima Community College's Hiring and Discipline Procedures**

This topic expected to be discussed in Executive Session- Pursuant to A.R.S. §38-431.03(A)(3) the Governing Board may vote to go into executive session for the purpose of obtaining legal advice from its legal counsel.

[Discussion of college hiring and discipline procedures and applicable legal requirements including due process, non-discrimination and retaliation]

Adjourn

*** Option to recess into legal advice executive session** — Pursuant to A.R.S. §38-431.03(A)(3) the Governing Board may vote to go into executive session for the purpose of obtaining legal advice from its legal counsel with respect to any item listed on this agenda or any addendum thereto.

Members of the Governing Board may participate by telephone, video or internet conferencing.

Meeting presentations will be posted within a reasonable time following the meeting.

To request a reasonable accommodation for individuals with disabilities, a minimum of 5 business days before the event is requested. Contact Phone: (520) 206-4539; Fax: (520) 206-4567.

Note: Other than action taken on the motion to go into the above-referenced executive session and the motion to adjourn the meeting, there will be no action taken by the Governing Board at this special meeting.

DRAFT

SERVICES AGREEMENT

This Services Agreement ("Agreement") is made as of the __ day of _____ 2017 by and between the following parties:

Pima County Community College District ("College") and

Pima Community College Foundation, Inc., an Arizona nonprofit corporation ("Foundation"), with reference to the recitals of facts and intentions and for the purpose of confirming the covenants hereinafter set forth. College and Foundation are sometimes referred to herein as a Party ("Party") or collectively as the Parties ("Parties").

RECITALS

- A. Foundation is organized and operated exclusively for educational, scientific, literary and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended ("Code"), and whose primary mission and purpose is to assist and support College in carrying out College's educational, operational and other purposes.
- B. Foundation has pursued its mission and purpose over the last forty (40) years primarily through raising private support to make gifts of scholarship funds to College and its students on an annual basis.
- C. Foundation has operated primarily with volunteers and following receipt of gifts has provided scholarship funds to College and its students and worked with College's employees in identifying scholarship qualifications and allocating its awards. Foundation has historically limited its activities primarily to scholarship development and has not been in a position to initiate any sustained major gift development or fundraising.
- D. College has and continues to face increasing operating challenges as a result of a decline in student enrollment and the suspension of virtually all state and governmental operating support and is undertaking a significant restructuring of its operations and re-examining its sources of revenue.

- E. College has determined that private philanthropy offers a real opportunity for College to have access to significant funds that are available to support educational purposes in the greater Tucson area, including support for academic programs, capital improvements and other operating needs.
- F. College and Foundation have discussed the potential range of opportunities available with Foundation and its existing status as a private, tax-exempt organization with the ability to raise funds, receive grants and obtain gifts through charitable contributions.
- G. Foundation with its primary mission and purpose to support College is already established in the greater Tucson community and College has asked Foundation to leverage its position and expand its public outreach to raise increased private support for College and its students and faculty.
- H. Foundation has developed experience in gift development and scholarship fundraising and the related compliance and filing requirements of the Internal Revenue Service ("Service") and the common law requirements applicable to the stewardship of charitable gifts and their management and expenditure.
- I. Foundation has experience in the receipt of gifts and the administration and management of money, securities and other forms of real and personal property, including their ownership and safekeeping and holding, management, improvement, investment, administration, transfer and disposal thereof for the benefit of College.
- J. College currently does not have a fully staffed central gift development and fundraising office with employees familiar with gift receipt practices and fundraising activities, compliance with the Code and the Service's requirements and processes for the receipt, management, investment and expenditure of charitable funds.
- K. College has determined that its future financial well-being must include two significant new programs: (1) a dedicated and permanent development component in its internal operations, including gift receipt and fundraising; and (2) an evolving relationship with a fundraising entity qualified to accept charitable donations, which are dedicated to support College, its students and faculty.
- L. College desires to engage Foundation as an independent contractor to provide consultation, recommendations, coordination and assistance to College in its development of a permanent fundraising and gift development office within College and training and support in the operation,

accounting, management and marketing activities of and by College; Foundation has agreed to provide such services, not as an employee or agent of College, but as an independent Foundation, all as more specifically set forth herein.

- M. College has also asked Foundation to simultaneously expand its own fundraising and gift development for the benefit of College and to substantially increase its traditional fundraising programs beyond scholarships and establish and develop major gift programs, corporate and foundation relationships, planned giving programs, annual giving programs and generally to more broadly utilize its established place in the Tucson charitable community for the benefit of College.
- N. Foundation has agreed to expand its fundraising efforts as requested by College and to provide services to College in the areas of fundraising, gift receipt and asset management. Foundation will necessarily add employees, confirm agreements with a variety of vendors and independent contractors and enter into agreements with professionals with expertise in fundraising, gift development, the management of restricted gifts and endowments, maintaining compliance with Service and Code requirements for charitable fundraising, use of funds and management of tax-exempt assets.
- O. Foundation's commitments to hire additional employees and to acquire new software, hardware and related materials to take advantage of the best information and performance data available on a national basis to enhance its fundraising and operational activities will require it to incur new expenses including, but not limited to, leasing additional office space to house sufficient staff and related equipment to manage its increased activities and to provide suitable, attractive offices in which to meet with and interact with donors and potential donors. Foundation will also begin to expend funds to join regional and national organizations that provide training, information, research and networking support for fundraising activities and compliance with regulated activities.
- P. While both College and Foundation can accept tax-deductible gifts for the benefit of College, the Parties agree that a long-range, multi-year collaborative fundraising program focused on College will enhance Foundation's mission and purpose to acquire gifts for the benefit of College (whether gifted to College or Foundation) that will exceed those that are being obtained under the current programs and College acknowledges that gifts to Foundation are primarily for the benefit of College.

- Q. College's development of its own gift and fundraising abilities will permit it to develop a permanent and sustainable operating structure that will facilitate its important role in the overall fundraising efforts for the benefit of College and will allow College to accept direct gifts as part of a coordinated program.
- R. College and Foundation desire to enter into this Agreement to identify the goals and responsibilities of each Party in connection with expanded and focused fundraising efforts by both Foundation and College.

COVENANTS

In consideration of the foregoing Recitals, which are incorporated herein by this reference thereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, College and Foundation hereby agree as follows:

1. Engagement of Services.

(a) College hereby engages Foundation, and Foundation hereby accepts and undertakes such engagement to continue Foundation's scholarship fundraising activity, including the receipt of gifts for such purpose and the administration thereof including the investment of funds provided therefore and to initiate a significant structural expansion of Foundation's development programs as more specifically provided herein and in connection therewith to provide consulting support to College in developing and expanding its gift receipts programs and general fundraising efforts and to coordinate the activities of both Foundation and College in developing private support for College and its programs including, but not limited to, the services set out in Exhibit A, attached hereto and made a part hereof ("Services").

(b) Foundation shall consult with and make recommendations to College to establish and operate a development function within College to support an increase in College's solicitation of gifts and the required management and administration of receipted gifts. Foundation shall provide the necessary consultation and recommendations for management, marketing, coordination, accounting, development and administration of the operations, programs and personnel for College in connection with the creation of a multi-year development plan through its Services for the benefit of College and its operations and shall direct the implementation of the components thereof accepted by College as requested by College from time to time.

(c) Foundation shall also expand its staffing, equipment and other resources necessary to support a significant increase in Foundation's development of gifts and fundraising. Foundation is undertaking a

review of its existing governance and policies and making adjustments to facilitate an expansion of its fundraising capabilities and procedures and has engaged professional fundraising advice on the Tucson charitable community and is reviewing recommendations on changes in structure and programs to begin expanded fundraising activities.

(d) The Parties agree to collaborate on the implementation of the Services and to phase in changes in development activity and the expansion of staffs and support to maximize the respective returns on investment and, accordingly, the Parties anticipate entering into mutually agreed upon adjustments to Exhibits A and B from time to time. College shall timely provide the services identified on Exhibit A as a College responsibility to insure a workable collaboration necessary to permit Foundation to deliver the Services within the agreed upon Fee.

(e) The Services shall include specific items described on Exhibit A and such other services as the Parties may mutually agree upon from time to time. The Parties shall regularly review the Services and may enter into changes, modifications and additions to the Services as mutually agreed upon. The Parties acknowledge that each Party is solely responsible for its own programs and that the recommendations of either Party to the other may be accepted or rejected by the other in such Party's sole discretion. Foundation shall render, perform and fulfill its obligations hereunder to prepare recommendations and provide consultation and direct the implementation of any of its recommendations accepted by College by and through its own employees and representatives. Upon request of College, Foundation may, as provided herein, assist in the implementation of those of its recommendations that have been accepted by College including any modifications made by College in its acceptance. College shall provide adequate staffing and equipment to support the operation of its programs as provided herein and Foundation shall provide adequate staffing and access to expertise to support the expansion of its programs.

(f) It is the intention of the Parties hereto that Foundation shall be acting as an independent contractor only, and no other relation, including agency, shall be created or deemed to be created hereby. Foundation shall supply its own offices, equipment, employees and related materials and shall determine the manner, means and method of providing the Services set out in this Agreement. Nothing contained herein shall be construed to make the Parties hereto partners or joint venturers, or to render either Party hereto liable for any of the debts, liabilities, or obligations of the other Party, or to create any agency relationship by or between them. No Party hereto may contract for or incur debts on behalf of the other.

(g) Foundation shall not keep or maintain any books or records for or on behalf of College which College may be required to keep and maintain as a public entity and all books and records kept and maintained by Foundation for its use shall remain its proprietary information of Foundation.

2. Selected Duties and Acknowledgments.

(a) The Services shall be rendered and performed by Foundation on a twelve-month per fiscal year basis. Foundation shall devote sufficient time, effort and personnel to the business activities, affairs and enterprises necessary to fulfill its duties and obligations in connection with the level of Services agreed to from time to time.

(b) College shall provide sufficient staffing, equipment and related materials to carry out its development activities on a full-time, twelve-month per fiscal year basis. College may request Foundation's consultation and recommendations on specific operations from time to time and, to the extent it accepts such recommendations, College will insure that it has adequate staff, equipment and related materials to implement the recommendations. Foundation shall not supply staff, equipment or related materials to operate or staff College's programs and operations although, as requested by College, Foundation may direct College employees in implementing and operating recommended programs as provided herein from time to time.

(c) Foundation and College shall individually and separately prepare their respective development plans, and the Parties shall confer on an annual basis to review and adjust their respective fundraising plans and gift development programs for the following fiscal year to avoid conflicts and to maximize the anticipated return of development activities for the benefit of the College ("Annual Coordinated Development Plan"). The Annual Coordinated Development Plan shall reflect future activities and build upon past efforts consistent with a multi-year strategy. The Annual Coordinated Development Plan shall include related budgets prepared by Foundation hereunder and shall be reviewed by the Chancellor of College and the President of Foundation periodically, not less often than quarterly, to determine each Party's respective priorities and common goals. The Parties shall use good faith efforts to complete the Annual Coordinated Development Plan at least sixty (60) days prior to the end of each fiscal year during the term of this Agreement and any extensions thereof. The Annual Coordinated Development Plan shall reflect each Party's intent to further its separate mission through such efforts of each Party through this annual development plan. The Annual Coordinated Development Plan shall not limit the authority of either Party to undertake its own, independent development activities.

(d) College and Foundation recognize that each of them is also guided by its own independent long-range strategic plans and the Parties shall share and utilize such information to develop the Annual Coordinated Development Plan to fit within their respective broader strategic plans.

(e) Before any gift of real property, intangible personal property or in-kind gifts received by Foundation may be transferred or distributed to College, review and written approval of College must be obtained and provided to Foundation in writing. College shall provide Foundation from time to time with a list of real

property, intangible personal property and in-kind gift conditions, which College will not accept. Foundation may refuse to accept certain types of gifts if, in its discretion, it determines that it does not have the ability to provide for their safekeeping and administration and in all situations where the gift may include the assumption or possible assumption of future liability.

(f) College acknowledges that although none of the employees of Foundation are, or will be, employees of College in connection with the performance of Foundation's obligations hereunder, the employees of Foundation may be asked by College from time to time to direct or otherwise assist in the implementation of its recommendations as directed by College and, in connection therewith, Foundation may be directing employees of College. Accordingly, College shall, at its expense and at a level determined by the Chancellor of College, provide for College employees, telephone systems and services, utilities, on campus office facilities, adequate personnel, office supplies and such other services and items, which are necessary or required from time to time to implement those recommendations accepted by College and to meet the objectives of the Annual Coordinated Development Plan.

(g) Funds and in-kind gifts are being raised primarily to support College and College agrees to assess and prioritize on a continuing basis its needs and develop with Foundation categories of gifts, both liquid and in-kind, that Foundation may use in its solicitation and fundraising efforts. The Parties recognize that most charitable gifts contain restrictions imposed by the donors on their use and timing of use and College will update its needs assessments on a regular basis and provide same to Foundation to enable Foundation to solicit funds to serve College's needs including timing.

(h) College acknowledges that Foundation requires information about College and its students and faculty to permit it to provide consultation and develop the recommendations set out in this Agreement and College agrees to make relevant information promptly available on a continuing basis to Foundation and shall designate appropriate officers within the College together with their contact information whom Foundation may contact from time to time. College shall provide to Foundation only such student and faculty information necessary to further each Party's objectives based on this Agreement through secure means through an internal software sharing program. In receiving of such information, Foundation shall comply with all applicable privacy rules and regulations, including, but not limited to, the Family Educational Rights and Privacy Act ("FERPA"). In particular, Foundation shall not disclose to any third party personally identifiable student information received from College without the written consent of the student. College acknowledges that it is important for Foundation to communicate with its donors as part of its donor stewardship programs and College shall promptly provide information of its use of gift funds received from Foundation including, but not limited to, awarded scholarships and recipients, program gifts including the status of such programs and similar information that may be used to solicit

additional gift funds for such purposes. In addition to compliance with applicable laws, the Parties agree that any information exchanged shall comply with the provisions of Section 10 of this Agreement.

(i) College acknowledges that the Pima College story is best told through its Chancellor and that a continuous presence at community engagement activities, donor appreciation occasions and important fundraising events will contribute significantly to the success of the overall development programs for both College and Foundation. College agrees that it will make the Chancellor and other senior level officers of College available to participate in College, Foundation and joint events.

3. Competitive Business Activities.

(a) College and Foundation acknowledge that each Party may legally accept tax-deductible gifts and that they compete, directly and indirectly, and shall continue from and after the date hereof to compete, for donations and gifts from the public in connection with the pursuit of their respective goals and purposes as established by their respective governing documents including articles of incorporation, by-laws, statutes, referendum and state policy. Nothing contained herein shall in any way or manner preclude or prohibit such competition between College and Foundation. However, the Parties hereto agree that notwithstanding such competition, neither Foundation nor College shall attempt to redirect gifts, donations or funds received by or intended for the other, whether in connection with the performance of their obligations hereunder or outside of the terms and provisions of this Agreement. Accordingly, the employees of College and Foundation shall not interfere or conflict with, or attempt to change, affect or alter, any decision of any prospective donor as to whether the intended gift or donation is to be received by either College or Foundation. The Parties hereto acknowledge that each donor has the right to decide whether to make his or her gift or donation to either College or Foundation, and neither Party hereto, nor its respective employees, shall interfere with, influence or assist in such decision, except that prospective donors may be informed of their option to make gifts directly to either College or Foundation.

(b) Any gift or donation intended for one Party hereto which is initially received by the other shall be transferred to the intended recipient as soon as practicable thereafter. Any gift or donation made to Foundation, whether received by College or Foundation, shall be handled in accordance with the policies and procedures established by Foundation from time to time. Similarly, any gift or donation made to College, whether received by Foundation or College, shall be handled in accordance with and subject to applicable state statutes and College policies. However, neither College nor Foundation shall act as the custodian, trustee or bailor with respect to any gift or donation not intended to be received or enjoyed by such Party, unless the intent, direction or instructions relating to such gift or donation provide otherwise.

4. Compensation.

(a) Foundation agrees to provide the Services set out in Exhibit A of this Agreement and College agrees to pay the Fee for the Services set out on Exhibit B. Such Fee shall be paid in twelve (12) equal installments during each year of this Agreement or prorated for any partial year. Foundation's primary mission and purpose is to support College and the Fee is based on Foundation's increased operating budget and capital needs necessary to expand its development and fundraising activity and to provide College with its consultation and recommendations in connection with College's development of its gift and fundraising programs as requested by College. To offset part of Foundation's operating expenses the Parties recognize that Foundation has and continues to utilize a traditional basis for underwriting a portion of its annual operating budget by assessing reasonable fees on its managed endowments and restricted funds and by retaining short-term interest income on deposited current-use funds and payout accounts. The Parties have agreed that this method of compensation is traditional and reasonable and enables Foundation to offer the Services provided herein at the agreed upon Fee.

(b) Foundation has reviewed the anticipated scope of Services with College and has informed College that the Fee does not contain "profits" to develop reserves and that it cannot expand the Services beyond those proposed in this Agreement at the agreed upon Fee. College and Foundation have discussed the categories of variable costs that will be incurred by Foundation including staffing, third party consultants and professionals required to initiate and provide the Services set out in this Agreement. College and Foundation agree that while the Fee is adequate to permit the Foundation to initiate the programs and provide the Services described in this Agreement, the scope of such activities may fluctuate from time to time due to increased activity or unanticipated events, in which case College and Foundation shall review the cost increases and issues being addressed and shall agree to an adjustment in the Fee or to a reduction in one or more categories of the Services to offset such expenses, or some combination thereof. If no agreement is reached, Foundation may reduce the category of Services that resulted in the additional expenses.

5. Transfer of Activities.

College may, from time to time, request Foundation to assume certain development functions that have previously been performed partly or fully by College employees (the "Transferred Services"), if any, which will be described more particularly by an amendment to Exhibits A and B. The Transferred Services are beyond the scope of the resources committed by Foundation for the Services and the Parties agree that each year during which College requests Foundation to perform any Transferred Services, College shall pay Foundation an amount agreed upon by the Parties as documented in the amendment to Exhibits A and B. Foundation shall not accept any Transferred Services that constitute a public duty of College including activities that require the maintenance of public records. All Transferred Services shall be limited to services that are typically provided by independent contractors and College's rights to review Foundation's books and records shall be limited to those provided by contract.

6. Fundraising Campaign Services.

(a) In addition to the Services, the Parties at the recommendation of and in coordination with the Foundation may undertake one or more major multi-year fundraising campaigns, which will include goals and purposes, which are not included in Foundation's operating budgets for the Services described herein and the Parties acknowledge that any such campaigns will require the additional expenditure of funds and commitment of personnel and other resources beyond those necessary to deliver the Services. In order to meet the requirements of new campaigns, College and Foundation may agree on a periodic basis on additional services to be provided by Foundation to or for the benefit of College, exclusively in connection with a new campaign (the "Campaign Services"), and for the additional compensation to be paid by the College to Foundation to defray the cost to the Foundation of providing Campaign Services ("Campaign Services Fee"). It is also anticipated that there may be one or more specific short term campaign projects and each such project shall be agreed up by the Parties with associated budgets and fees set out separately in an amendment to Exhibits A and B. Each Campaign shall be based on its own budget and increases or decreases in the Campaign Services Fee and shall be individually adjusted from time to time as provided in Section 4(c) of this Agreement. The Campaign Services shall be subject in all respects to the provisions of this Agreement unless expressly set forth otherwise in such memorandum.

(b) Foundation shall provide quarterly reports on Campaign Services, or at such other intervals agreed upon by the Parties. All funds and other resources raised through a Campaign, and whether received by College or by Foundation, shall be for the primary benefit of the College, unless College consents otherwise in writing.

7. Term.

The Term of this Agreement ("Term") shall commence on July 1, 2017 and expire on the fifth anniversary of such commencement date unless sooner terminated as provided herein. The Term may be extended on a two year-to-two year basis for a period not to exceed a total of six (6) additional years based upon the written determination of the Chancellor of College and the consent of Foundation, provided however, that thirty (30) days prior to the then expiration date of the Term or such extended Term, the Parties agree in writing to the Fees and any Campaign Fees to be paid by College to Foundation during such extended Term, subject to adjustment as provided in this Agreement. College, after appropriate investigation, consideration and review, has determined that it is in its best interests to develop long-range, multi-year fundraising programs that anticipate current as well as future requirements and to establish repetitive donor participation. Based upon industry standards an initial five (5) year overall development program appears reasonable and prudent to serve not only the best interests of College, but also to maximize the efforts of College and Foundation, reduce the overall operating costs thereof, and permit the Parties

to plan for their respective performance over such period. References to a “year” in this Agreement shall mean a fiscal year beginning on July 1 and ending on June 30 unless otherwise provided.

8. Termination.

Either Party hereto may, upon not less than ninety (90) days prior written notice to the other, terminate this Agreement effective as of the first day of a calendar month following such notice period. Notwithstanding the foregoing, either Party hereto may terminate this Agreement in the event the other party hereto defaults in the performance of its obligations hereunder and fails to cure the default within thirty (30) business days after receipt of written notice specifying said default. In the event College elects to terminate this Agreement for any reason other than a default by Foundation, College agrees to pay to Foundation together with such notice of termination the unamortized value of equipment and materials acquired by Foundation as part of the implementation of the Services. No payment obligation of College hereunder shall be incurred and no expenditure for payment by College hereunder shall be made out of funds subject to appropriation or funds of the State of Arizona except pursuant to a valid appropriation and allotment in accordance with the State of Arizona Constitution and laws of the State of Arizona including, without limitation, Arizona Revised Statutes, Section 35-154. If and to the extent an appropriation and allotment is necessary to enable College to make any payment hereunder, and a valid appropriation or allotment for the payment is not made, College may terminate this Agreement effective as of the end of the last period for which payment has been made or provided for from funds lawfully available without penalty or expense to College. College represents to Foundation that upon the effective date of this Agreement, the funds necessary to make its payments hereunder exist pursuant to a valid appropriation and College shall timely seek such appropriation for each year of the Term or Extended Term and shall notify Foundation immediately upon learning that such appropriation is not available.

9. Reports.

Foundation shall report to College on a quarterly basis on its delivery of the Services and Campaign Services hereunder including its various gift receipts and fundraising progress and results. It is the intention and understanding of the Parties that nothing in this Agreement shall be construed to make Foundation either a public or quasi-public entity, department or agency of the State of Arizona or College, or to subject Foundation to rules, regulations, laws or policies or procedures which are imposed upon or are applicable to public agencies, entities or departments, or to provide any right to the public (except the College as provided for herein) which the public may have with respect to any state or public entity, department or agency.

10. Confidentiality and Non-Disclosure.

College and Foundation acknowledge that the on-going working and support arrangements between them

may, from time to time, bring the Parties into possession of, or grant them access to, materials belonging to the other, which are proprietary in nature, including materials which are restricted by law from dissemination to third parties ("Confidential Information"). Whether possession or access to such materials is inadvertent or as part of the working relationship, the Parties agree as follows:

- "Confidential Information" shall mean and include all information, whether written or transferred orally, visually, electronically or by any other means, concerning either Party's business and affairs, which is of a non-public, confidential or proprietary nature, and includes without limitation all financial information, information about its employees, information about students, health records of any type, and all analyses, compilations, studies or other documents prepared by either Party or any of its Related Parties which contain or otherwise reflect any such information. The Parties shall make best efforts to clearly and conspicuously mark and identify Confidential Information as confidential; in the case of Confidential Information transmitted orally, such transmission of Confidential Information shall be followed by written confirmation of its confidential nature within ten (10) business days of such transmission. The Parties acknowledge that College is a public entity and subject to Arizona Public Records requests and any information not clearly and conspicuously marked and identified as confidential, may be subject to disclosure upon a valid public records request.
- "Related Parties" shall mean and include all officers, directors, employees, members, managers, subsidiaries, affiliates, agents, lawyers, accountants, professional advisors, and other persons or entities acting in concert with or on behalf of a Party.
- The term "Confidential Information" does not include Information that (i) is or becomes generally available to the public other than as a direct or indirect result of disclosure by the other Party or by any of its Related Parties; or (ii) was known to the other Party prior to the disclosure to it by the other; or (iii) is provided to the other Party or to any of its Related Parties by a third party (provided that the receiving party could not reasonably know that its receipt of such Information was in breach of any agreement to the contrary); or (iv) is developed independently by either Party without use or reliance on protected information of the other.
- The Parties shall limit any access to the other's Confidential Information to that required solely for the purposes of furthering the programs being provided by either Party and each acknowledges that any such access is by permission of the other. Each Party agrees that

copies of any Confidential Information shall not be provided to any third parties, either electronically or otherwise, without the written consent of the other and all such information shall be returned to the other Party or destroyed following its use.

- Foundation's Confidential Information is prepared for its use and such materials do not constitute records kept by College in the course of its business and do not constitute public records within the meaning of ARS 39-101, *et seq.*
- College and Foundation each agree that it shall comply with all applicable laws and regulations relating to the use of any Confidential Information of the other through access to their materials whether inadvertent or pursuant to consent as part of on-going programs.
- Neither Party shall be prohibited from disclosing any Confidential Information pursuant to a subpoena or court order in criminal, civil or administrative proceedings, or otherwise as required by law. The Parties will notify each other within ten (10) business days, or as soon as reasonably possible, of any instance in which the disclosure or copies of Confidential Information is requested so that the Party whose Confidential Information is requested may seek a protective order or injunction from such Confidential Information being disclosed.

11. College Name and Marks.

Foundation shall operate under its own name, seal and logotype; and College hereby recognizes Foundation's right to use its corporate name without license. Foundation is hereby granted a general, non-exclusive, royalty-free, license to use the name "Pima Community College" in all fund-raising activities conducted for the benefit of College. Excluding its corporate name, Foundation shall not use College seal or other identifying marks, trademarks, logotypes and other proprietary marks in the promotion of Foundation's business and activities, unless it first obtains a separate license agreement from College granting such rights, except that Foundation may use such materials in carrying out its duties under this Agreement. Foundation may not delegate the authority to use College's name or other marks to any person or entity without College's prior written approval. Gifts obtained by Foundation through the use of College's name or other marks shall be expended primarily for the use or benefit of College, or as agreed between the Parties, subject to any restrictions imposed by the donors. As long as this Agreement is in effect, Foundation shall not undertake fund-raising or other activities for the benefit of any educational institution or organization other than College or affiliates of College, without the written consent of College, unless the College receives at least 50% of the benefit of such fund-raising or other activity. Foundation

shall be barred from using College's marks licensed to Foundation if College's relationship with Foundation, as set forth in this Agreement, is terminated.

12. Conflict of Interest.

This Agreement is subject to the provisions of A.R.S. §38-511, and College may terminate this Agreement if any person significantly involved in initiating, negotiating, drafting, securing or obtaining this Agreement for or on behalf of the College becomes an employee in any capacity of any other Party hereto or consultant to any other Party hereto with reference to the subject matter of this Agreement while this Agreement or an extension of the Term hereof is in effect.

13. Nondiscrimination.

College and Foundation agree to be bound by applicable state and federal rules governing equal employment opportunities and nondiscrimination.

14. Arbitration.

The Parties agree that any dispute arising under this Agreement involving the sum of \$30,000 or less in money damages only shall be resolved by arbitration pursuant to the Arizona Uniform Rules of Procedure for Arbitration. The decision of the arbitrator(s) shall be final.

15. Notices.

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:

Pima Community College Foundation, Inc.
4905 East Broadway Boulevard, Suite 252
Tucson, Arizona 85709
Attn: President

If to the College:

Pima County Community College District

4905 East Broadway Boulevard, Suite C-1005
Tucson, Arizona 85709
Attention: Chancellor

or to such other person or at such other address as either Party hereto may designate by written notice to the other. Notices delivered personally shall be deemed given when received. Notices delivered by mail shall be deemed given on the second business day after being deposited in the United States mail as indicated by the postmark thereon.

16. Miscellaneous.

(a) 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.

(b) This Agreement may not be amended, modified, supplemented or altered except by an instrument in writing executed by both of the Parties hereto.

(c) 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.

(d) This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Arizona, both statutory and decisional.

(e) If any provision of this Agreement or the application thereof to any Party hereto or under any circumstance shall in any way be held invalid or unenforceable, 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 effected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable laws.

(f) This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

(g) 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, which may be withheld in their sole and absolute discretion.

(h) Each Party shall indemnify, defend, and hold harmless the other Party from and against any and all claims, demands, judgments, liabilities, costs, and expense resulting from a Party's negligence and/or willful misconduct pursuant to its participation in this Agreement.

(i) Each Party shall maintain all appropriate levels of insurance pursuant to their activities and responsibilities stated in this Agreement. Each Party shall, on request of the other Party, provide a certificate of insurance naming the other Party as an additional insured, with limits of no less than \$1 million per occurrence and \$3 million in the aggregate. Should Foundation hold any events on any property owned, leased, and/or maintained by College, Foundation shall enter into an agreement with College for the use of such space and shall procure all appropriate types and levels of insurance pertaining to any such event as provided in such agreement. Both College and Foundation shall name the other as an additional insured on all applicable policies for any such event.

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

Pima County Community College District

By: _____

Its: _____

**Pima Community College Foundation, Inc.,
an Arizona nonprofit corporation**

By: _____

Its: _____

EXHIBIT A
SERVICES AGREEMENT
In General

1. The Parties have agreed to pursue private philanthropic giving with the common goal of supporting the operation of College, its students and faculty.

2. The Parties recognize that the goal of obtaining increased private support for College will be achieved whether gifts are made to Foundation or given directly to College and the Parties acknowledge that a high degree of collaboration and strategic planning will be essential to establishing a collective fundraising program and efficient management of assets process.

3. Foundation has agreed to pursue two related programs with overlapping components, both of which are designed with the common goal of raising private support for College, both directly and indirectly. First, pursuant to this Services Agreement, Foundation and College will each pursue increased fundraising and gift development efforts for their respective development programs. Second, Foundation will collaborate and consult with College and provide recommendations, assistance, support and training on a wide variety of activities related to College's increased and focused development efforts, including the organization and operation of an internal development office and its fundraising programs and campaigns as provided herein.

DEVELOPMENT PROGRAMS

1. Foundation shall review, establish or recommend, as the case may be, fundraising and gift development opportunities for Foundation and College including but not limited to:

- a. Major Gift Programs
- b. Corporate and College Relations
- c. Planned Giving
- d. Annual Giving programs
- e. Special Events
- f. Matching Gift Programs
- g. Internal Gifting Programs
- h. Alumni Relations Programs
- i. Grant Requests
- j. Donor Stewardship Programs

2. Foundation shall review and recommend staffing requirements necessary to support the development programs being implemented at any given time, including industry qualifications for personnel and program organization and implement same for Foundation and provide recommendations to College from time to time.

3. Foundation shall develop and share industry information on all development programs and current "best practices" and provide recommendations to College on operations and modifications necessary or desirable from time to time.

4. Foundation shall make recommendations to the College Chancellor or designee for the management, marketing, coordination, accounting, development and administration of the operations of programs and personnel of the College in connection with the creation and operation of a gift receipts and fundraising development office.

5. Foundation shall institute at the Foundation and recommend to College procedures for acknowledging and collecting gifts and related compliance requirements and assistance in the documentation of gifts and compliance with applicable laws.

6. Foundation shall expand Foundation's donor database and provide recommendations and assist College in building its database to be used for donor follow up, solicitations and other donor communications.

7. Foundation shall develop protocols on gift restrictions to provide for proper classification, uniformity, clarity of purpose and ease of use to the extent possible and work collaboratively with College to identify restricted gift categories and identification of College needs and develop documentation for use in the gift receipt process.

8. Foundation shall develop and implement for Foundation, and provide recommendations to College, procedures to receive, store and provide safekeeping for in-kind gifts including documentation and procedures on value, filings with the Internal Revenue Service, deeds of gift, development of donor representations on condition and ownership, including appropriate donor indemnities, insurance, safekeeping issues, including facilities, and identify potential future expenses associated with gifts including liens on real property, capital calls associated with interests in limited liability companies and partnerships and similar future liabilities that may be associated with an in-kind or intangible personal property gift.

9. Foundation shall develop with College a list of in-kind gifts that the College will not accept and that the Foundation will not accept without a documented mutually acceptable agreement.

10. Foundation shall work to increase community outreach and invite public participation in Foundation and College events and share College needs for specific programs, endowment goals and capital requirements that have the potential to resonate with the private sector and attract their involvement.

COLLEGE FUNDRAISING ACTIVITIES

Foundation shall provide College with consultation and shall make recommendations from time to time to assist College's development of its internal programs for gift development and fundraising and its gift receipts, managements of assets and fundraising activities including:

1. Collaborate with College on short and long term fundraising goals and assist in the development of schedules consistent with the Annual Development Plan and submit for review long term, multi-year specific objectives, strategies and fundraising plans and programs.

2. Assist College in implementing the development goals and recommendations that are accepted by the College, from time to time, and provide consulting services in connection with such recommendations and assistance in implementation as requested.

3. Assist the College in community engagement and help raise the community's interest in the College's mission by participation in community programs and assisting College in establishing programs designed to attract the general public and business leaders in Greater Tucson.

4. Develop and submit proposals, promotional brochures and written materials in support of specific fundraising activities, including materials for use on websites and social media.
5. Recommend methods to coordinate and direct all fundraising programs and activities undertaken by the College in concert with the Annual Development Plan.
6. Direct and participate as requested in studies relating to long and short term planning, acquisitions and related projects.
7. Recommend priorities among and between various fundraising projects and campaigns.
8. Identify specific needs among College's campuses and departments for private funds and identify prospects for College campaigns.
9. Recommend and coordinate the activities of individual campuses, departments and centers for excellence potential capital campaigns.
10. Develop and implement collaborative training programs including in-house discussions, training by outside professionals, workshops and hands on training within the Foundation and College.

FOUNDATION FUNDRAISING PROGRAMS

Foundation shall begin to expand its gift receipts and fundraising programs immediately upon execution of this Agreement and shall begin to phase in new development programs and to increase staff and other resources generally necessary to leverage its position as a tax-exempt organization to attract tax-deductible gifts for the benefit of College including:

1. Expand Foundation's fundraising programs to include:
 - a. Major Gift Programs
 - b. Corporate and College Relations
 - c. Planned Giving
 - d. Annual giving programs
 - e. Special Events
 - f. Matching Gift Programs
 - g. Internal Gifting Programs
 - h. Alumni Relations Programs
 - i. Grant Requests
2. Develop staffing and materials necessary to establish and operate Foundation's gift development and fundraising programs through direct hires and the use of independent contractors to reach staffing and material levels outlined in the Services Agreement.
3. Coordinate gift development and fundraising programs with College to maximize impact and returns.
4. Increase community awareness of College and its programs through public engagement including special events, publications and the use of the Internet and social media.

5. Create continuing education programs on current “best practices” in educational fundraising being used on a national basis.

6. Enter into lease agreements for office space sufficient to house additional staff and equipment to carry out the services contemplated by the Services Agreement and at a location suitable to facilitate meetings with potential donors.

7. Update computer systems and software programs to utilize state of the art standards to track and document the development programs, including the management of assets.

8. Continue and expand the use of programs designed to utilize volunteers in special events and other development programs.

FUNDS MANAGEMENT FUNCTIONS

1. To the extent that the Foundation receives its own gifts during the term, the Foundation shall:

- (a) Receive charitable contributions primarily for the benefit of the College, its faculty and students including various annual funds, building and other campaigns.
- (b) Hold, manage, invest and develop contributions of money, securities, patents, copyrights and other forms of personal property, including immediately vesting gifts as well as deferred gifts that are contributed in the form of retained life estates, trusts and unitrusts, some of which may be given subject to restrictions.
- (c) Hold, manage and develop immediately vesting or deferred gifts of real property including residential, multi-residence, commercial, agricultural/ranching, subsurface rights and leasehold interests for an indefinite period of time.
- (d) Develop corporate policies to select and guide prudent investments and select and retain qualified account managers.
- (e) Develop corporate policies on the creation of endowment and restricted accounts and payouts consistent with applicable law.
- (f) Develop corporate policies on reasonable fees payable for administrative support for the management of Foundation funds.

2. With respect to funds received by College, Foundation shall;

- (a) Consult and provide recommendations with respect to College's management and adoption of appropriate policies regarding gift development and fundraising consistent with applicable law.
- (b) College has requested Foundation to provide its recommendations on the general management and administration of gift funds as provided below and to develop systems and procedures in connection with such management and administration including the substantiation of gifts and categorization by donor restrictions on purpose, use and timing.

General Administration and Accounting Advice

1. Foundation shall generate and provide reports to College administration on the operations of College's fundraising and gift receipts programs where College has requested Foundation support and advice, such reports to be based on information provided by College from time to time.

2. Foundation shall recommend recruitment and management strategies for staff and officers of College working with College's fundraising and gift programs to assist with programs, activities and department operations; provided, however, any recommendations by Foundation for personnel hiring or employment by College shall be limited solely to an analysis of a person's ability to perform the intended work or service and shall not include any background review or inquiry or determination of other requirements or conditions of College employment, all of which shall be the sole obligation and responsibility of College.

3. Foundation shall advise College with respect to financial accounting, financial stability, liquidity and financial growth with respect to specific gift revenue accounts and the investment and use thereof.

4. Foundation shall recommend gift accounting practices.

5. Foundation shall coordinate the investment policies and practices of managers of College's office working with fundraising and gift receipts when requested by College.

6. Foundation shall assist College in the preparation of operating budgets with respect to the Annual Development Plan as requested by College.

7. Foundation shall provide appropriate College personnel with information, analysis and evaluation of the business and accounting systems and operations of College's fundraising programs recommended by Foundation and implemented by College, including analysis and evaluation of the effectiveness of the College's activities.

8. Foundation shall recommend and develop long range plans to meet College's development research needs and objectives, including:

- (a) Identifying appropriate research activities of College, and
- (b) Recommending upgrades of all materials used in research, including national computer database networks and information retrieval services.

9. Foundation shall assist with relationships between College and financial institutions and the general investment community when requested by College.

SCHOLARSHIP PROGRAMS

College and Foundation desire to promote the availability of scholarship funds currently being administered by the College and Foundation and to insure consistency and uniformity within the scholarship process including establishing the available scholarships and to organize a uniform selection and application process compliant with applicable laws and regulations.

1. The Parties agree that College possesses the necessary student and College records necessary to provide programmatic responsibility for the various scholarships and grants available to its students. The Parties have also agreed that administration of both College scholarships and scholarship gifts from the Foundation will be handled most efficiently and in a manner compliant with applicable laws and regulations by College and is the best way to achieve uniform and timely selections and awards.

2. Foundation shall continue its scholarship fundraising and management of funds for such purposes and shall provide College, from time to time, with information on the number, identity and amount of scholarship funds which Foundation is prepared to gift to College. Such information shall include the restrictions and qualifications for the use of particular funds as required by the original donor's gift. Foundation and College shall collaborate on the timing of the scholarship process and the gift of funds by Foundation.

3. Foundation has experience in the selection of scholarship applicants and the award of scholarships and College has requested Foundation's recommendations on the management of scholarship funds held and administered by College and with the selection and award of scholarships from College funds and those gifted by Foundation to insure consistency in scholarship management and compliance with applicable laws. College will provide information on student applications and qualifications that will enable Foundation to make recommendations to College as requested from time to time on the selection, award and programmatic responsibility with respect to the scholarship programs. Foundation's services shall include: (1) work with donors on gift restrictions and the proper classification to provide for proper classification, uniformity, clarity of purpose and ease of use to the extent possible; (2) develop programs to identify scholarship selections for various funds and awards and disbursements in compliance with requirements of the gift instruments and the Code and the Service's regulations and; (3) coordinate all scholarship information with College to insure its continuing compliance with programmatic responsibility and arrange for the transfer of scholarship funds to College.

Miscellaneous

1. Foundation shall acquire software and computer equipment at the request of College on terms reasonably acceptable to Foundation. Enter into indemnification and hold harmless agreements at the request of College, on terms reasonably acceptable to Foundation, and then sub-contract or sublicense to College the software or computer equipment without the indemnification/hold harmless provisions. Acquire software and computer equipment necessary for Foundation's operation of its fundraising and gift development programs.

2. Foundation shall attend charitable and business events in the Greater Tucson area from time to time at the request of College and celebrate College successes from time to time through events, newspaper advertisements, networking meetings and similar forums where the Pima College story can be shared with others.