

MT. SAC AUXILIARY SERVICES CORPORATION
THIRD QUARTERLY MEETING OF THE BOARD OF DIRECTORS

Thursday, March 3, 2022

Building 4, Conference Room 2460 – 2:00 p.m.

Please provide any public comment by noon Thursday, March 3, 2022,

To: Yadira Santiago – ysantiago2@mtsac.edu

AGENDA

Auxiliary Services Board of Directors Members:

Morris Rodrigue, Chairperson

Audrey Yamagata-Noji

Rosa Royce

Jenny Leung

Courtney Larrabee

Suzanne Luetjen (Staff)

Eddie Correa (Guest)

Yadira Santiago (Notes)

1. Call to Order.
2. Public comment.
3. Consideration of Approval of Minutes for December 2, 2021.
4. Appointment of Associated Students Representative – Courtney Larrabee.
5. Consideration to Accept the Audit report from Eide Bailly, LLP, Certified Public Accountants, for the Fiscal Year Ending June 30, 2021, relating to the Books and Records of the Mt. SAC Auxiliary Services Corporation.
6. Auxiliary Statement of Revenues and Expenses (Unaudited) YTD.
7. Discussion – Amended and Restated Bylaws.
8. Discussion – Amended and Restated Master Agreement.
9. Discussion – RFP Vending - Special Meeting of the Auxiliary Board of Directors.
10. Discussion – Update on the Food Services & Bookstore Advisory Committees.
11. Reports:
 - Administrative Services
 - SacBookRac
 - Sodexo
12. Adjourn

Board approved future meeting dates:

June 2, 2022

September 1, 2022

December 1, 2022

March 2, 2023

June 1, 2023

September 7, 2023

December 7, 2023

MT. SAC AUXILIARY SERVICES CORPORATION BOARD OF DIRECTORS MINUTES

Thursday, December 2, 2021

The second quarterly meeting of the Mt. SAC Auxiliary Services Corporation Board of Directors, was called to order at 2:08 p.m. on Thursday, December 2, 2021, by Morris Rodrigue, Chairperson. Those present were: Morris Rodrigue, Audrey Yamagata-Noji, and Jenny Leung. Guest: Eddie Correa. Staff: Suzanne Luetjen and Yadira Santiago. Absent: Rosa Royce.

2 – No public comment.

3 – Consideration of Approval of Minutes for September 2, 2021 – It was moved by Jenny Leung, seconded by Audrey Yamagata-Noji, to approve the minutes of September 2, 2021.

Ayes: Rodrigue, Yamagata-Noji, Leung
Absent: Royce

4 – Appointment of Associated Students Representative – No representative provided at the time. This item has been tabled until the next meeting.

5 – Consideration of Approval to Accept the Statement of Revenues and Expenses (Unaudited) YTD June 30, 2021 – It was moved by Jenny Leung, seconded by Audrey Yamagata-Noji, to approve the Statement of Revenues and Expenditures (Unaudited) YTD June 30, 2021.

Ayes: Rodrigue, Yamagata-Noji, Leung
Absent: Royce

6 – Consideration of Approval of Personnel Transactions – It was moved by Jenny Leung, seconded by Audrey Yamagata-Noji, to approve the Personnel Transactions.

Ayes: Rodrigue, Yamagata-Noji, Leung
Absent: Royce

7 – Consideration of Approval of Amendment to Sodexo Contract – It was moved by Audrey Yamagata-Noji, seconded by Jenny Leung, to approve the amendment to Sodexo contract.

Ayes: Rodrigue, Yamagata-Noji, Leung
Absent: Royce

8 – Discussion – RFP Vending – forming of committee is in process.

9 – Discussion update on the Food Services & Sodexo Advisory Committee. This item will be kept on the Agenda for updates. Morris and Audrey will meet to discuss committee goals and member representatives.

10 – Reports:

- Administrative Services – Morris Rodrigue
- SacBookRac – Suzanne Luetjen
- Sodexo – Eddie Correa

11 – Adjournment – The meeting adjourned at 3:03 p.m.

Mt. San Antonio College Auxiliary Services
Statement of Revenues and Expenses (Unaudited)

(YTD September 30, 2021)

	2021-22 ESTIMATED	2021-22 ACTUALS as of 09/30/21	2020-21 ACTUALS as of 09/30/20
Revenues			
Commissions and Sponsorships:			
Barnes and Noble (July 2021-December 2021)	\$ 100,000	\$ 93,976	\$ 75,887
Barnes and Noble (January 2022-June 2022)	126,433	-	-
Sodexo	83,974	17,922	-
Pepsi Sponsorship	83,500	83,500	19,500
Compass Group-Canteen Vending	48,670	4,867	14,750
ATM	440	110	-
Salaries and Employer Benefits - Reimbursed by Barnes & Noble Amendment to be ratified March 2022, Effective 7/1/2021	240,000	60,000	47,157
B&N Scholarships	5,000	-	-
Other:			
Unfunded CalPERS Liability-Paid by the District	333,869	83,467	72,001
Miscellaneous Income (One-Time)	1,828	111	541
Fair Value Investment Income	-	13,877	-
Interest Income	12,184	3,046	8,101
Total Revenues	\$ 1,035,898	\$ 360,876	\$ 237,936
Expenses			
Operating Expenses:			
Salaries and Employer Benefits - Reimbursed by Barnes & Noble	\$ 475,111	\$ 143,116	\$ 140,290
One-Time Stipend COVID-19 Pandemic	38,578	-	-
Retirees Health Premiums	289,807	72,240	72,653
Retirees Health Premiums Reimbursement	(289,807)	(72,240)	-
Unfunded CalPERS Liability	357,768	89,442	77,765
Accounting Services (Includes Reimbursement of 1 FTE)	158,524	38,849	36,793
Hospitality			
Hospitality-President Institutional	75,000	19,486	-
Hospitality-President	75,000	13,275	10,099
Hospitality-Human Resources	13,000	1,639	-
Hospitality-Instruction	20,000	3,831	449
Hospitality-Student Services	13,000	518	153
Hospitality-Administrative Services	21,000	889	1,101
Facilities Lease (Paid to the College)	10,000	2,500	2,500
Office Supplies, ATM Fees, Bank Charges	7,270	1,197	1,141
Scholarships and Donations:			
Scholarships-Canteen Vending	9,000	-	-
Scholarships-Pepsi	21,500	21,500	-
Foundation Golf Tournament Fund-Pepsi	2,000	2,000	-
Barnes & Noble Textbook Scholarship	5,000	-	-
Miscellaneous			
Miscellaneous Expenses	2,000	1	701
Total Expenses	\$ 1,303,751	\$ 338,243	\$ 343,645
Income or Loss - Modified Accrual Basis	\$ (267,853)	\$ 22,633	\$ (105,709)
GASB Transactions:			
Depreciation	33,484	8,371	8,454
	\$ 33,484	\$ 8,371	\$ 8,454
Income or Loss Per Audit - Full Accrual Basis	\$ (301,338)	\$ 14,262	\$ (114,163)

Mt. San Antonio College Auxiliary Services
Income Statement Report for the First Quarter 2021-22
(As of 09/30/2021)

The “2021-22 Estimated” includes projected figures for the fiscal year. The report also includes year-to-date actuals as of September 30, 2021 compared to September 30, 2020. As of September 30, 2021, the quarter reflects a net income of \$14,262. This increase is due to:

- The net increase in Commissions of \$90,238 primarily attributed to the increase in commissions of Barnes & Noble, Sodexo, and Pepsi.
- There is an increase in reimbursement of bookstore salaries of \$12,843 when comparing fiscal year 2021-22 and 2020-21. In Fiscal Year 2020-21 Barnes & Noble reimbursed Auxiliary only for July 2020 salaries and benefits. August and September were not reimbursed as stated in the MOU. Effective July 1, 2021 Barnes & Noble will reimburse Mt. SAC Auxiliary Services up to \$20,000 per month for salaries and benefits for the Full-Time Auxiliary Employees.
- The Interest Income increased by \$8,822. This increase is the net of a decrease in interest income of (\$5,055) due to decreases in cash balances, lower interest rates, and the Fair Value Investment Income adjustment of \$13,877.
- The salaries and employee benefits of bookstore staff reflect a minor increase of \$2,826.
- The Retirees Health Premiums decreased by \$72,653 because effective July 1, 2021 these expenditures are being reimbursed by the Auxiliary OPEB Trust.
- The Hospitality expenses increased by \$27,835 because activities in person resumed with the fall 2021 semester.
- The Scholarships and Donations show an increase of \$23,500. However, this is a timing issue between quarters. These Scholarships were paid in the second quarter of 2020-21.

Mt. San Antonio College Auxiliary Services
Statement of Revenues and Expenses (Unaudited)

(YTD December 31, 2021)

	2021-22 ESTIMATED	2021-22 ACTUALS as of 12/31/21	2020-21 ACTUALS as of 12/31/20
Revenues			
Commissions and Sponsorships:			
Barnes and Noble (July 2021-December 2021)	\$ 100,000	\$ 175,230	\$ 87,610
Barnes and Noble (January 2022-June 2022)	126,433	-	
Sodexo	83,974	43,690	-
Pepsi Sponsorship	83,500	83,500	52,000
Compass Group-Canteen Vending	48,670	16,803	-
ATM	440	206	
Salaries and Employer Benefits - Reimbursed by Barnes & Noble Amendment to be ratified March 2022, Effective 7/1/2021	240,000	120,000	47,157
B&N Scholarships	5,000		
Other:			
Unfunded CalPERS Liability-Paid by the District	333,869	166,935	144,002
Miscellaneous Income (One-Time)	1,828	193	697
Misc. Income (Textbooks Rentals, Medicare Part D, and Other)			
Fair Value Investment Income	-	13,877	-
Interest Income	12,184	5,581	12,720
Total Revenues	\$ 1,035,898	\$ 626,014	\$ 344,186
Expenses			
Operating Expenses:			
Salaries and Employer Benefits - Reimbursed by Barnes & Noble	\$ 475,111	\$ 258,115	\$ 283,039
One-Time Stipend COVID-19 Pandemic	38,578	38,580	-
Retirees Health Premiums	289,807	145,775	145,103
Retirees Health Premiums Reimbursement	(289,807)	(145,775)	
Unfunded CalPERS Liability	357,768	178,884	155,531
Accounting Services (Includes Reimbursement of 1 FTE)	158,524	77,691	73,907
Hospitality			
Hospitality-President Institutional	75,000	27,143	-
Hospitality-President	75,000	16,002	16,380
Hospitality-Human Resources	13,000	3,229	-
Hospitality-Instruction	20,000	9,534	449
Hospitality-Student Services	13,000	1,360	423
Hospitality-Administrative Services	21,000	5,816	2,463
Facilities Lease (Paid to the College)	10,000	5,000	5,000
Office Supplies, ATM Fees, Bank Charges	7,270	2,363	3,635
Scholarships and Donations:			
Scholarships-Canteen Vending	9,000		-
Scholarships-Pepsi	21,500	21,500	22,500
Foundation Golf Tournament Fund-Pepsi	2,000	2,000	2,000
Barnes & Noble Textbook Scholarship	5,000		-
Miscellaneous			
Miscellaneous Expenses	2,000	728	952
Total Expenses	\$ 1,303,751	\$ 647,944	\$ 711,381
Income or Loss - Modified Accrual Basis	\$ (267,853)	\$ (21,931)	\$ (367,195)
GASB Transactions:			
Depreciation			
	33,484	16,742	16,909
	\$ 33,484	\$ 16,742	\$ 16,909
Income or Loss Per Audit - Full Accrual Basis	\$ (301,338)	\$ (38,673)	\$ (384,104)

Mt. San Antonio College Auxiliary Services
Income Statement Report for the Second Quarter 2021-22
(As of 12/31/2021)

The “2021-22 Estimated” includes projected figures for the fiscal year. The report also includes year-to-date actuals as of December 31, 2021 compared to December 31, 2020. As of December 31, 2021, the loss decreased by \$345,431 (\$-384,104 in 2020-21 to \$-38,673 in 2021-22). This decrease is due to:

- The net increase in Commissions of \$179,818 attributed to the increase in commissions of Barnes & Noble, Sodexo, Pepsi, and Compass Vending.
- There is an increase in reimbursement of bookstore salaries of \$72,843 when comparing fiscal year 2021-22 and 2020-21. In Fiscal Year 2020-21 Barnes & Noble reimbursed Auxiliary only for July 2020 salaries and benefits. August through December were not reimbursed as stated in the MOU. Effective July 1, 2021 Barnes & Noble will reimburse Mt. SAC Auxiliary Services up to \$20,000 per month for salaries and benefits for the Full-Time Auxiliary Employees.
- The Interest Income increased by \$6,737. This increase is the net of a decrease in interest income of (\$7,140) due to decreases in cash balances, lower interest rates and the Fair Value Investment Income adjustment of \$13,877.
- The salaries and employee benefits of Bookstore staff decreased by \$24,924. The decrease in salaries and employee benefit of Bookstore staff is due to the retirement of one employee.
- The increase of \$38,580 is due to a one-time COVID-19 stipend for call back time pay for work performed from March 19, 2020 to June 30, 2021.
- The Retirees Health Premiums decreased by \$145,103 because effective July 1, 2021 these expenditures are being reimbursed by the Auxiliary OPEB Trust.
- The Hospitality expenses increased by \$43,369 because activities in person resumed with the fall 2021 semester.

**AMENDED AND RESTATED BYLAWS
OF
MT. SAC AUXILIARY SERVICES
a California Nonprofit Public Benefit Corporation**

**ARTICLE I
NAME AND OFFICES**

1.1 Name.

The name of this corporation is MT. SAC AUXILIARY SERVICES.

1.2 Principal Office.

The principal office for the transaction of the activities and affairs of the corporation is located at 1100 North Grand Avenue, Walnut, California 91789. The board of directors may change the location of the principal office of the corporation to any place within the State of California.

1.3 Other Offices.

The board of directors may at any time establish branch or subordinate offices at any place the corporation is qualified to conduct its activities.

**ARTICLE II
PURPOSES AND LIMITATIONS**

2.1 General Purposes.

This corporation is a nonprofit public benefit corporation organized under the Nonprofit Public Benefit Corporation Law for public or charitable purposes. This corporation is not organized for the private gain of any person.

2.2 Specific Purposes.

Within the context of the general purposes stated above, this corporation is organized and at all times hereafter shall be operated exclusively to benefit the Mt. San Antonio Community College District ("District"), its students, and the general community of which it is a part, in the following manner:

- (a) By providing supportive services and specialized programs for the general benefit of the District;
- (b) By receiving gifts, property, and funds to be used for the benefit of the District;
- (c) By operating and managing the Mt. San Antonio College ("College") Bookstore;

(d) By contracting with food services to include meals, fast-food, concessions, and catering for the District;

(e) By operating athletic events at the District and to benefit the College;

(f) By contracting vendor services for the District; and

(g) To exercise any other rights and powers conferred on nonprofit public benefit corporations under the laws of the state of California which are authorized functions or activities for an auxiliary organization under the Title 5 Regulations and which are permissible functions or activities under District policies and procedures and the Master Agreement, as may be amended, entered into between the District and this corporation.

This corporation shall be operated in connection with the District as specified in Internal Revenue Code section 509(a)(3).

2.3 Limitations.

(a) This corporation is organized and operated exclusively for public and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States internal revenue law. Notwithstanding any other provision of these bylaws, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of this corporation, and the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States internal revenue law, or (b) by a corporation, contributions to which are deductible under Sections 170(c)(2), 2055(a)(2) and 2522(a)(2) of the Internal Revenue Code of 1986 or the corresponding provisions of any future United States internal revenue law.

(b) No substantial part of the activities of this corporation shall consist of lobbying or propaganda or otherwise attempting to influence legislation, except as provided in Section 501(h) of the Internal Revenue Code of 1986, and the corporation shall not participate or intervene (including publishing or distributing statements) in any political campaign on behalf of or in opposition to any candidate for public office except as provided in such Section 501(h).

(c) The property of this corporation is irrevocably dedicated to the purposes set forth above. No part of the earnings of this corporation shall ever inure to the benefit of any directors or officers of this corporation or to the benefit of any private person.

(d) Upon the dissolution and winding up of the corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of this corporation shall be distributed to the District, which is an organization described in Internal Revenue Code section 170(b)(1)(A) or 501(c)(3). If the District shall cease to be an organization described in Internal Revenue Code section 170(b)(1)(A) or 501(c)(3), the directors of this corporation shall designate a publicly supported educational or charitable organization as described in Internal Revenue Code sections 170(b)(1)(A) or 501(c)(3), in substitution for the District, for purposes of the articles of incorporation and these bylaws.

ARTICLE III MEMBERSHIP

3.1 Corporation Without Members.

This corporation shall have no voting members within the meaning of the Nonprofit Corporation Law.

ARTICLE IV BOARD OF DIRECTORS

4.1 Number of Directors.

The authorized number of directors shall initially be five (5) but may be changed by resolution of the corporation's Board of Directors or by an amendment of these bylaws, as long as the number of authorized directors shall be within the range of five (5) to seven (7). The authorized board members shall include: (a) three (3) ex-officio directors who shall be (i) the Vice President, Administrative Services of the District, Chair (ii) the Vice President, Student Services of the District, Vice-Chair; (iii) the Associated Students' President of the District or their designee; and, (b) two (2) directors who are appointed by the Vice President, Administrative Services of the District and selected from one or more of the following categories:

- (a) Administration;
- (b) Classified staff;
- (c) Faculty;
- (d) Students;
- (e) Athletic Services administration or staff; and/or,
- (f) Members of the Community.

4.2 General Powers.

- (a) General Powers.

Subject to the provisions of the California Nonprofit Public Benefit Corporation Law and subject to any limitations in the articles of incorporation and these bylaws, the corporation's activities and affairs shall be managed and all corporate powers shall be exercised by or under the direction of the board of directors. The board may delegate the management of the activities of the corporation to any person or persons, management company, or committee however composed, provided that the activities and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the board.

- (b) Specified Powers.

Without prejudice to such general powers, but subject to the same limitations, the board of directors shall have the power and authority to:

(1) Except as otherwise provided in these bylaws, approve any action which would otherwise be required to be approved by members if this corporation had members.

(2) Appoint and remove all officers, agents, and employees of the corporation; prescribe such powers and duties for them as may not be inconsistent with law, with the articles of incorporation or with these bylaws; fix their compensation; and require from them security for faithful service.

(3) Change the principal executive office or the principal business office in California from one location to another; cause the corporation to be qualified to do business in any other state, territory, dependency, or foreign country; and conduct business within or outside California.

(4) Adopt, make and use a corporate seal and alter the form of such seal.

(5) Borrow money and incur indebtedness on behalf of the corporation and cause to be executed and delivered for the corporation's purposes and in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, or other evidences of debt and securities for such consideration; provided, however, that no loan shall be contracted on behalf of the corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the board of directors.

4.3 Term of Office.

All of the directors of the corporation other than ex-officio directors shall serve one (1) year terms and may, if reappointed or re-elected, as the case may be, serve consecutive terms.

4.4 Election of Directors.

Successors to the non-ex officio directors who are not appointed by the Vice President, Administrative Services of the District and who are not otherwise appointed pursuant to Section 4.1 of these bylaws shall be elected by a majority of the directors then in office at the annual meeting of the board of directors. Each director shall hold office for their full term of office as set forth in Section 4.3 and until a successor has been elected or appointed and qualified unless he or she has resigned or been removed or his or her office has been declared vacant in the manner provided in these bylaws.

4.5 Voting.

Each member of the board of directors shall have one vote. There shall be no proxy voting permitted for the transaction of any of the business of this corporation.

4.6 Resignation of Directors.

Except as provided below, any director may resign from the board at any time by giving written notice to the president, secretary or chief financial officer of the corporation and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Notwithstanding the above, except on notice to the California Attorney General, no director may resign if the corporation would be left without a duly elected director or directors.

4.7 Removal of Directors.

A non ex-officio director may be removed from office without cause by a four-fifths (4/5) vote of the total number of voting directors then in office.

4.8 Restriction on Interested Persons as Directors.

Notwithstanding any other provision of this Article IV, no more than forty-nine percent (49%) of the persons serving on the board may be interested persons. An interested person is (a) any person compensated by the corporation for services rendered to it within the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a director as director; and (b) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of such person. However, any violation of the provisions of this paragraph shall not affect the validity or enforceability of any transaction entered into by the corporation.

4.9 Compensation of Directors.

Directors may not receive compensation for their services as directors, but may receive such reimbursement of expenses as may be fixed or determined by resolution of the board of directors.

4.10 Inspection by Directors.

Each director shall have the right at any reasonable time to inspect all books, records, and documents of every kind and the physical properties of the corporation for a purpose reasonably related to such person's interest as a director. The right of inspection includes the right to copy and make extracts of documents.

4.11 Vacancies.

A vacancy in a director position because of removal, death, resignation, or otherwise shall be filled in the same manner as the former occupant of the position was selected. Notwithstanding the foregoing, if the former occupant of the position was elected by approval of the board of directors and the number of directors then in office is less than a quorum, the vacancy may be filled by (a) the unanimous written consent of the directors then in office, (b) the affirmative vote of a majority of the directors then in office at a meeting held according to notice or waivers of notice in accordance with Section 5211 of the Nonprofit Public Benefit Corporation Law, or (c) a sole remaining director. Any person designated to fill a vacancy on the board of directors shall

hold office for the unexpired term of his or her predecessor in office, subject to the power of removal contained herein.

ARTICLE V MEETINGS OF THE BOARD OF DIRECTORS

5.1 Place of Meetings.

Meetings of the board of directors shall be held at any place within this State which has been designated from time to time by resolution of the board. In the absence of such designation, meetings shall be held at the principal office of this corporation.

5.2 Annual Meeting.

The board of directors shall hold an annual meeting on the first Thursday in June each year, or at such a time as shall be fixed by the board of directors, for the purpose of organization, election of officers and transaction of other business.

5.3 Regular Meetings.

Other regular meetings of the board of directors shall be held at such time as may be fixed by the board of directors, but shall be held at least on a quarterly basis. The secretary shall be required to call a meeting upon the joint request of any two (2) directors of the board.

5.4 Special Meetings.

Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairperson of the board, if any, the president, any vice president, the secretary, or any two directors, to be held at such time and place as shall be designated in the notice of meeting.

5.5 Notice of Meeting.

Notice of the time and place of special meetings of the board of directors shall be given by written notice delivered personally or sent by mail or e-mail or facsimile to each director at his or her address as shown on the records of the corporation. If mailed, such notice shall be deposited in the United States mail at least seven (7) days before the date set for the meeting, in a sealed envelope so addressed, with postage thereon prepaid. If notice is given by e-mail or facsimile, such notice shall be sent at seven (7) days before the time set for the meeting. The Notice of Meeting shall contain an agenda listing the matters to be considered at each meeting and shall be given to each Director, and to any person so requesting, at least seven (7) days before the meeting.

Notwithstanding anything in this section to the contrary, the chairperson may call an emergency meeting of the Board without giving the normal notice if such a meeting is necessary to discuss an unforeseen emergency condition. An emergency condition for the purpose of this subsection is any condition that, if not addressed by the Board promptly, may result in a detriment to the Corporation or the District. Notice of emergency meeting may be delivered personally,

telephoned or mailed and shall be received at least twenty-four (24) hours before the time of such meeting.

The business to be transacted at any special meeting of the board shall be specified in the notice. If and when California Government Code sections 54950 et. seq. (the “Brown Act”) shall apply to any meeting held by the corporation, the corporation shall comply with the requirements of the Brown Act.

5.6 Quorum and Manner of Acting.

A majority of the total number of authorized directors shall constitute a quorum of the board of directors for the transaction of business. Every act or decision done or made by a majority of the directors present at a meeting at which a quorum is present shall be regarded as the act of the board of directors, subject to the more stringent provisions of the California Nonprofit Public Benefit Corporation Law, including, without limitation, those provisions relating to (a) approval of contracts or transactions in which a director has a direct or indirect material financial interest, (b) approval of certain transactions between corporations having common directorships, (c) creation of and appointments to committees of the Board, and (d) indemnification of directors. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of a director or directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

5.7 Adjournment and Notice of Adjourned Meeting.

Notwithstanding Section 5.6 above, a majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given unless the original meeting is adjourned for more than twenty-four (24) hours. If the original meeting is adjourned for more than twenty-four (24) hours, notice of any adjournment to another time and place shall be given, before the time of the adjourned meeting, to the directors who were not present at the time of the adjournment.

5.8 Minutes of Meetings and Conduct.

Regular minutes of the proceedings of the board of directors shall be kept in a book provided for that purpose. The board of directors may adopt its own rules of procedure insofar as such rules are not inconsistent with, or in conflict with, these bylaws, the articles of incorporation of the corporation or with the law.

ARTICLE VI OFFICERS

6.1 Officers.

The officers of the corporation shall be a chairperson of the board (who shall act as president), a vice-chair, and a secretary, and a treasurer who shall also act as chief financial officer. The corporation may also have, at the discretion of the board of directors, one or more vice presidents, one or more assistant secretaries, one or more assistant chief financial officer, and such other officers as may be appointed in accordance with the provisions of Section 6.3. Any

two or more offices may be held by the same person, except that neither the secretary nor the chief financial officer may serve concurrently as either the president or the chairperson of the board.

6.2 Election.

The officers of the corporation, except such officers as may be appointed or serve ex-officio in accordance with the provisions of Sections 4.1 and/or 6.3, shall be elected by the board of directors, and each shall serve for a one (1) year term at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment.

6.3 Other Officers.

The board of directors may appoint and may authorize the president or other officers to appoint such other officers as the business of the corporation may require, including an executive director to manage the day-to-day actions of the corporation. Each officer so appointed shall hold office for such period and have such authority and perform such duties as are provided in these bylaws or as the board of directors may from time to time determine.

6.4 Removal of Officers.

Any officer appointed by the board of directors may be removed at any time, with or without cause or notice, by the board of directors. Subordinate officers appointed by persons other than the Board under Section 6.3 may be removed at any time, with or without cause or notice, by the board of directors or by the officer by whom appointed. Officers may be employed for a specified term under a contract of employment if authorized by the board of directors; such officers may be removed from office at any time under this section and shall have no claim against the corporation or individual officers or board members because of the removal except any right to monetary compensation to which the officer may be entitled under the contract of employment.

6.5 Resignation of Officers.

Any officer may resign at any time by giving written notice to the corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified in such notice; and, unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective. Any such resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

6.6 Vacancies in Office.

A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these bylaws for regular appointments to such office.

6.7 Responsibilities of Officers.

(a) Chairperson of the Board.

The chairperson of the board, if such an officer be elected, shall, if present, preside at all meetings of the board of directors and exercise and perform such other powers and duties as may be from time to time assigned to him or her by the board of directors or prescribed by the bylaws. If there is no president, the chairperson of the board shall in addition be the chief executive officer of the corporation and shall have the powers and duties of the president as prescribed in these bylaws.

(b) President/Chief Executive Officer.

Subject to such supervisory powers, if any, as may be given by the board of directors to the chairperson of the board, if there be such an officer, the president shall be the chief executive officer of the corporation and shall, subject to the control of the board of directors, have general supervision, direction and control of the activities and the officers of the corporation. He or she shall preside, in the absence of the chairperson of the board or if there be none, at all meetings of the board of directors. He or she shall have the general powers and duties of management usually vested in the office of president of a corporation, and shall have such other powers and duties as may be prescribed by the board of directors or these bylaws.

(c) Vice-Chair.

In the absence or disability of the chairperson/president, the vice-chair shall perform all the duties of the chairperson/president. When so acting, the vice-chair shall have all the powers of, and be subject to all the restrictions upon, the chairperson/president. The vice-chair shall have such other powers and perform such other duties as from time to time may be prescribed to him/her respectively by the board of directors or the bylaws, the president or the chairperson of the board.

(d) Secretary.

(1) Minutes.

The secretary shall keep or cause to be kept, at the principal executive office or such other place as the board of directors may order, a book of minutes of all meetings, proceedings and actions of directors and committees of directors. The minutes of each meeting shall state the time and place the meeting was held; whether it was annual, regular or special; if special, how it was called or authorized; the names of those present at board and committee meetings; and an accurate account of the proceedings. If the secretary is unable to be present, the secretary or the presiding officer of the meeting shall designate another person to take the minutes of the meeting. The secretary shall keep or cause to be kept, at the principal office in California, a copy of the articles of incorporation and bylaws, as amended to date.

(2) Notices, Seal, and Other Duties.

The secretary shall give, or cause to be given, notice of all meetings of the members, the board of directors and committees of the board of directors required by these bylaws to be given. In case of the absence or disability of the secretary, or his or her refusal or neglect to act, such notices may be provided by the president, or by the vice president, if any, or by any person authorized by the president or by any vice president, or by the board of directors. The secretary shall keep the

corporate seal, if any, in safe custody and shall have such other powers and perform such other duties as the board or the bylaws may prescribe.

(e) Chief Financial Officer.

(1) Books of Account.

The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of account of the properties and transactions of the corporation. The chief financial officer shall send or cause to be given to the directors such financial statements and reports as are required to be given by law, by these bylaws or by the board. The books of account shall at all reasonable times be open to inspection by any director.

(2) Deposit and Disbursement of Money.

The chief financial officer shall deposit, or cause to be deposited, all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the board of directors. He or she shall disburse the funds of the corporation as may be ordered by the board of directors, shall render to the president and directors, whenever they request it, an account of all of his transactions as chief financial officer and of the financial condition of the corporation, and shall have other powers and perform such other duties as may be prescribed by the board of directors or the bylaws. If so required by the board of directors, the chief financial officer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety as the board of directors shall deem appropriate. The chief financial officer shall submit such annual reports to the board of directors as required by law or as directed by the board of directors.

ARTICLE VII INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHER AGENTS

7.1 Right of Indemnity.

To the fullest extent permitted by law, the corporation shall indemnify its directors, officers, employees, and other persons described in Section 5238(a) of the California Corporations Code, including persons formerly occupying any such position, against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred by them in connection with any “proceeding,” as that term is used in that Section, and including an action by or in the right of the corporation, by reason of the fact that the person is or was a person described in that section. “Expenses,” as used in these bylaws, shall have the same meaning as in Section 5238(a) of the California Corporations Code.

7.2 Approval of Indemnity.

On written request to the board by any person seeking indemnification under Section 5238(b) or Section 5238(c) of the California Corporations Code, the board shall promptly determine under Section 5238(e) of the California Corporations Code whether the applicable standard of conduct set forth in Section 5238(b) or Section 5238(c) has been met and, if so, the board shall authorize indemnification.

7.3 Advancement of Expenses.

To the fullest extent permitted by law and except as otherwise determined by the board in a specific instance, expenses incurred by a person seeking indemnification under these bylaws in defending any proceeding covered by those Sections shall be advanced by the corporation before final disposition of the proceeding, on receipt by the corporation of an undertaking by or on behalf of that person that the advance will be repaid unless it is ultimately determined that the person is entitled to be indemnified by the corporation for those expenses.

7.4 Insurance.

The board shall have the right to authorize and direct the officers of the corporation to cause the corporation to purchase and maintain insurance to the full extent permitted by law on behalf of its officers, directors, employees, and other agents, against any liability asserted against or incurred by any officer, director, employee, or agent in such capacity or arising out of the officer's, director's employee's or agent's status as such.

ARTICLE VIII RECORDS AND REPORTS

8.1 Maintenance of Corporate Records.

The board shall cause the appropriate officers of the corporation to keep:

- (a) Adequate and correct books and records of account;
- (b) Written minutes of the proceedings of the board and committees of the board; and
- (c) A record of each director's name and address.

8.2 Maintenance and Inspection of Articles and Bylaws.

The secretary shall keep at the corporation's principal office the original or a copy of the articles of incorporation and bylaws as amended to date.

8.3 Annual Report.

The board shall cause an annual report to be sent to directors and to the District within one hundred twenty (120) days after the end of the corporation's fiscal year. That report shall contain the following information, in appropriate detail, for the fiscal year:

- (a) The assets and liabilities, including the trust funds, of the corporation as of the end of the fiscal year;
- (b) The principal changes in assets and liabilities, including trust funds;
- (c) The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes;

(d) The expenses or disbursements of the corporation for both general and restricted purposes; and

(e) Any other information required by these bylaws.

If the income statements and balance sheets referred to in this section have not been audited, they shall be accompanied by the report of any independent accountants engaged by the corporation or the certificate of an authorized officer of the corporation that such financial statements were prepared without audit from the books and records of the corporation.

An annual report must be furnished to any director who requests it in writing.

8.4 Annual Statement of Certain Transactions and Indemnifications.

As part of the annual report to all directors, or as a separate document if no annual report is issued, the board shall cause to be annually prepared and mailed or delivered to each director a statement of any transaction or indemnification of the following kind within one hundred twenty (120) days after the end of the corporation's fiscal year:

(a) Any transaction (i) in which the corporation or its parent or subsidiary was a party, (ii) in which an "interested person" has a direct or indirect material financial interest, and (iii) which involved more than \$50,000, or was one of a number of transactions with the same interested person involving, in the aggregate, more than \$50,000.

(b) Any indemnifications or advances aggregating more than \$10,000 paid during the fiscal year to any officer or director of the corporation under Article VII of these bylaws, unless that indemnification has already been approved by the directors under Section 5238(e) of the California Corporations Code.

For this purpose, an "interested person" is any director or officer of the corporation, its parent or its subsidiary. The statement shall include a brief description of the transaction, the names of interested persons involved, their relationship to the corporation, the nature of their interest in the transaction and, if practicable, the amount of that interest; provided that if the transaction was with a partnership in which the interested person is a partner, only the interest of the partnership need be stated.

ARTICLE IX GENERAL CORPORATE MATTERS

9.1 Checks, Drafts, Evidences of Indebtedness.

All checks, drafts, or other orders for payment of money, notes or other evidences of indebtedness issued in the name of or payable to the corporation shall be signed or endorsed by the chief financial officer and the president, or such other officers of the corporation, and in such manner, as shall be determined by resolution of the board of directors.

9.2 Contracts.

The board of directors, except as the bylaws otherwise provided, may authorize any officer or officers or agent or agents to enter into any contract or execute any instrument in the name of and on behalf of the corporation. Such authority may be general or confined to one or more specific matters. Unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

9.3 Loans and Borrowing.

The board of directors shall not cause the corporation to make any loan of money or property to or guarantee the obligation of any director or officer unless approved by the Attorney General. No loan shall be contracted on behalf of the corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the board of directors.

9.4 Deposits.

All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the board of directors may select.

9.5 Gifts, Donations, Bequests and other.

The board of directors may at their discretion accept on behalf of the corporation any contribution, gifts, donations, bequests, trusts and specially funded grants, and other income for the general purposes or for any specific purpose of the corporation.

ARTICLE X MISCELLANEOUS

10.1 Fiscal Year.

The fiscal year of the corporation shall end on the last day of June in each year unless otherwise determined by resolution of the board of directors.

10.2 Rules.

The board of directors may adopt, amend, or repeal rules not inconsistent with these bylaws for the management of the internal affairs of the corporation and the governance of its officers, agents, committees, and employees.

10.3 Corporate Seal.

The board of directors may provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the corporation, the date of its incorporation, and the word "*California*".

10.4 Waiver of Notice.

Whenever any notices are required to be given under the provisions of the Nonprofit Corporation Act of the state of California, or under the provisions of the articles of incorporation of the corporation, or these bylaws, a waiver thereof in writing signed by the persons entitled to such notice, whether dated before or after the time such notices are required to be given, to the extent permitted by law, shall be deemed equivalent to the giving of such notice.

10.5 Restrictions.

This corporation shall distribute the income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Internal Revenue Code section 4942, shall not engage in any act of self-dealing as defined in Internal Revenue Code section 4941(d), shall not retain any excess business holdings as defined in Internal Revenue Code section 4943(c), shall not make any investments in a manner as to subject it to tax under Internal Revenue Code section 4944, and shall not make any taxable expenditures as defined under Internal Revenue Code section 4945(d).

ARTICLE XI AMENDMENT TO BYLAWS

11.1 Amendment to Bylaws.

These bylaws may be amended at any regular meeting of the board of directors by a majority vote of the board of directors; provided, however, that if any provision of these bylaws requires the vote of a larger proportion of the board than is otherwise required by law, that provision may not be altered, amended, or repealed except by that greater vote.

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify that:

1. I am the duly elected and acting secretary of MT. SAC AUXILIARY SERVICES, a California nonprofit public benefit corporation.

2. The bylaws to which this certificate is attached, comprising fourteen (14) pages, constitute the bylaws of such corporation as duly adopted by the board of directors on _____, 2021.

I further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of my own knowledge.

Dated: _____, 2021.

_____, Secretary

**AMENDED AND RESTATED MASTER AGREEMENT
BY AND BETWEEN
MT. SAN ANTONIO COLLEGE
AND MT. SAC AUXILIARY SERVICES**

THIS AMENDED AND RESTATED MASTER AGREEMENT (the “Agreement”) is entered into as of this ___ day of _____, 2022, by and between the Mt. San Antonio College (the “District”), and Mt. SAC Auxiliary Services (the “Foundation”), a California nonprofit public benefit corporation.

RECITALS

- A. The District and the Foundation desire to enter into this Agreement to set forth the terms of the relationship between the District and the Foundation, which has been established as an auxiliary organization of the District pursuant to Title 3, Division 7, and Section 72670 et seq., and Title 5, Division 6, Section 59250 et seq., of the California Code of Regulations.
- B. As required by Education Code Sections 59250 et seq., and 72670 et seq., the Board of Trustees of the District has adopted implementing regulations for auxiliary organizations which require that all auxiliary organizations enter into a written agreement with the District.
- C. The District and the Foundation desire to enter into this Agreement in accordance with the District’s implementing regulations regarding auxiliary organizations.

AGREEMENT

NOW, THEREFORE, the parties covenant and agree as follows:

ARTICLE I

FOUNDATION PURPOSES AND FUNCTIONS

Section 1.1. Statement Regarding Use of Foundation. The administration by the Foundation of the functions and activities described in this Agreement, instead of administration by and through the District, is deemed to be more effective in accomplishing such functions and activities than would be possible under usual governmental budgetary, purchasing and other fiscal procedures.

Section 1.2. Foundation Functions. Consistent with the policies and implementing regulations of the District’s governing board, the Foundation will maintain authority and be responsible for the following:

- (a) providing supportive services and specialized programs for the general benefit of the District;

- (b) receiving gifts, property, and funds to be used for the benefit of the District;
- (c) operating and managing the Mt. San Antonio College Bookstore;
- (d) contracting with food services to include meals, fast-food, concessions, and catering for the District;
- (e) operating athletic events at the District and to benefit the College;
- (f) contracting vendor services for the District; and
- (g) exercising any other rights and powers conferred on nonprofit public benefit corporations under the laws of the state of California which are authorized functions or activities for an auxiliary organization under the Title 5 Regulations and which are permissible functions or activities under District policies and procedures and this Agreement, as may be amended, entered into between the District and this corporation.

This corporation shall be operated in connection with the District as specified in Internal Revenue Code section 509(a)(3).

Section 1.3. Covenant to Maintain Existence. During the term of this Agreement, the Foundation agrees to maintain its existence and to operate in accordance with this Agreement and with Education Code section 72670 et. seq. and section 59250 et. seq. of Title 5 of the California Code of Regulations, as well as with District policy and the implementing regulations for auxiliary organizations adopted by the District.

ARTICLE II

ANNUAL AUDITS AND PROFESSIONAL SERVICES

Section 2.1. Attorney and Accountant Services. The board of directors of the Foundation shall engage at least one attorney admitted to practice law in California and at least one licensed certified public accountant to provide advice and counsel, as needed, on legal and financial matters. Neither the attorney nor the certified public accountant need be members of the board of directors of the Foundation.

Section 2.2. Annual Audit. The board of directors of the Foundation shall cause an annual fiscal audit of the Foundation to be conducted by a certified public accountant. This annual audit may, but need not, be conducted as part of a fiscal audit of the District. The annual audit will include a review of the internal control structure and a report of recommendations. Copies of the annual audit report and management letter comments shall be submitted to the District within thirty (30) days after it is received by the Foundation. The Foundation shall annually publish the audited statement of its financial condition. The statement shall be disseminated as widely as feasible and be available to any person on request. A reasonable fee may be charged to cover the costs of providing such copies.

Section 2.3. Annual Budget. The Foundation shall also prepare for the District an annual budget of its revenues and expenses. This report shall be provided to the District for the District's approval prior to the beginning of each Foundation fiscal year.

Section 2.4. Foundation Records. The Foundation shall keep and maintain records and accounts of its operations, financial status and program expenditures for a period of not less than five (5) years following each budget period. Such records and reports may be maintained in the District office, subject to the terms of Article III of this Agreement. Such records and reports shall cover all activities of the Foundation whether pursuant to this Agreement or otherwise. The District shall have the right to inspect and audit such records and accounts during and/or following the close of any Foundation fiscal year following reasonable notification to the Foundation. The District shall also have the right to take custody of all records generated by the Foundation in any way relating to its administration of the services, programs, functions or activities described in Section 1.2 of Article I of this Agreement. The rights and obligations provided in this Section shall survive the termination of this Agreement.

Section 2.5. Annual Statement of Benefits. The Foundation shall provide the District with an annual statement describing the benefits and services of the Foundation to the District. This report shall be presented to the Board of Trustees of the District no later than 120 days following the close of the Foundation's fiscal year.

ARTICLE III

USE OF DISTRICT FACILITIES

Section 3.1. Use of District Facilities. The Foundation, separately or jointly with the District, may occupy, operate and use District facilities and property as identified in Appendix A to this Agreement, which may be amended from time to time, to accomplish the purposes of this Agreement. However, the Foundation's operations under any such amendment shall be integrated with District operations and shall be under the general supervision of District officials. Furthermore, it is understood and agreed that District officers, employees and agents shall have the right to enter any such facilities or any part thereof at any time for the purpose of examination or supervision. A description of facilities to be used by the Foundation is set forth in Appendix A to this Agreement. The Foundation's use of District facilities does not establish a landlord/tenant relationship between the District and the Foundation, unless such a relationship is otherwise established by a separate written agreement entered into between the District and the Foundation.

Section 3.2. Charge or Rental. Appendix A sets forth the charge or rental to be paid to the District by the Foundation for the use of such facilities or property. Such charge or rental may be for less than fair rental value to the extent permitted by Section 81440(b) of the Education Code.

Section 3.3. Use of Facilities. The Foundation shall use the facilities and property of the District pursuant to Appendix A only for those services and functions that are consistent with this Agreement and consistent with the policies, rules and regulations which have been or may be adopted by the Board of Trustees of the District.

Section 3.4. District Right to Terminate. The right to use any of the District facilities or property granted in Appendix A shall cease upon written notice by the District that the facilities or property are needed for the exclusive use of the District.

Section 3.5. Maintenance and Operating Expenses. The Foundation agrees that it shall keep and maintain all such facilities and property in a clean and orderly condition and shall, at its own expense, at reasonably frequent intervals, and in a lawful manner, dispose of all waste generated from its use of College facilities. The Foundation further agrees that it shall keep all such facilities and property in good repair. The Foundation shall provide reimbursement to the District for utility costs, maintenance and custodial costs relating to the facilities, as provided in Section 4.2 of this Agreement.

Section 3.6. Third Party Agreements By Foundation. The Foundation shall not enter into any contract that would obligate the District, its facilities, equipment or personnel, without the prior written approval of the District. The Foundation has no authority to bind the District, by contract or otherwise, in any amount.

Section 3.7 Indemnification. The Foundation agrees to indemnify, defend and hold harmless the District, its officers, agents, and employees from any and all loss, damage or liability that may be suffered or incurred by the District, its officers, agents and employees, caused by, arising out of, or in any way connected with the use of any of such facilities by the Foundation in connection with this Agreement; provided that the loss, damage or liability does not arise from the intentional or negligent acts or omissions of the District, its officers, agents or employees.

Section 3.8. Signs, Fixtures and Equipment. During the term of this Agreement, the Foundation shall have the right to erect, place and attach fixtures, signs and equipment in or upon facilities as authorized by the President of the District in writing as to number, size and location. Fixtures, signs or equipment so erected, placed or attached by the Foundation shall be and shall remain the property of the Foundation and shall be removed therefrom by the Foundation upon the termination of this Agreement or written direction of the President of the District.

Section 3.9. Restoration. Upon termination of this Agreement, the District shall have the option to require the Foundation, at the Foundation's expense and risk, to restore all such facilities as nearly as possible to the condition existing prior to the execution of this Agreement; provided, however, that if the Foundation shall fail to do so within ninety (90) days after the District exercises such option, the District may restore the property at the expense of the Foundation; and all costs and expenses of such restoration shall be paid by the Foundation upon demand of the District. The District shall have the right to exercise this option within thirty (30) days after the expiration of this Agreement, but not thereafter.

Section 3.10. Survival of Rights. The rights and obligations provided in this Article shall survive the termination of this Agreement.

ARTICLE IV

REIMBURSEMENT OF DISTRICT COSTS

Section 4.1. Reimbursement for Services of District Employees. The Foundation shall monetarily reimburse the District for the District's direct compensation and employee benefit expenditures for services performed by District employees. The District shall provide the Foundation with a monthly invoice for the amount of such expenditures. The Foundation shall pay such invoice within thirty days of the Foundation's receipt of the invoice by the delivery to the District of a check for the amount of the invoice.

Section 4.2. Reimbursement for District Expenditures. In addition to the reimbursement provided under section 4.1, the Foundation shall reimburse the District for other expenditures incurred by the District as a result of the Foundation's activities. This reimbursement shall include, but not be limited to, custodial and District employee services other than those reimbursement amounts provided in Section, 4.1, and shall include utility costs, maintenance costs and supplies. The Foundation's reimbursement of the costs under this Section 4.2 may be in the form of non-monetary benefits provided by the Foundation to the District, as authorized by California Attorney General Opinion 97 Ops. Atty. Gen. 1105 (1998). The District shall annually invoice the Foundation for such expenditures, indicating items charged and the method of determining costs. The reimbursement shall be computed on a simple but equitable basis and shall be made by the Foundation within thirty (30) days of receipt of the invoice. The Foundation may provide reimbursement under this section either by making monetary reimbursement or by providing a statement of the in-kind contribution or benefits provided to the District by the Foundation, as may be agreed upon between the District and the Foundation.

Section 4.3. Indirect Costs Relating to Federal Programs. If the Foundation administers a federally-sponsored program, it shall reimburse the District for indirect costs associated with the performance of services by District for the Foundation relating to the federally-sponsored project. Such reimbursement shall take into consideration the District's federal indirect cost rate and the approved indirect cost allocation, if any, of the federal program award. In the event that the District's federal indirect cost rate has not been determined, the District's President shall determine and specify such costs and the amount thereof. All such reimbursements shall be made by the Foundation within thirty (30) days of receipt of an invoice with a determination of such costs.

ARTICLE V

DISPOSITION OF FOUNDATION ASSETS

Section 5.1. Approval of Expenditures. The board of directors of the Foundation shall approve all expenditures and fund appropriations of the Foundation. Appropriations of funds for use outside the normal business operations of the Foundation shall be approved in accordance with policy and further consistent regulations adopted by the Board of Trustees. In addition, the Foundation will conform its expenditures for public relations to the policies adopted by the District.

Section 5.2. Disposition of Net Earnings. Net earnings derived from the operations of the Foundation shall be used solely to benefit the District and its students or used for reserves as established by the board of directors of the Foundation.

Section 5.3. Disposition of Assets Upon Dissolution. Upon dissolution of the Foundation or the cessation of its operations under this Agreement, its assets remaining after payment, or provisions for payment, of all debts and liabilities shall be distributed to either (i) such organization organized and operated exclusively for educational purposes in support of the District, which has established its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or (ii) a state or political subdivision of a state of the United States to be used exclusively for public purposes. That organization shall be the District if it qualifies as such at the time of disposition, for its exclusive benefit.

ARTICLE VI

MISCELLANEOUS

Section 6.1. Term of Agreement. The term of this Agreement shall be necessary for use of the facilities and assets by the Foundation to operate for five fiscal years commencing effective as of July 1, 2021, through June 30, 2026, unless sooner terminated as provided herein, or unless a successor amendment to this Agreement is executed between the District and the Foundation. Should the term hereunder terminate, all assets and facilities will automatically revert to the District. In any event of termination, the provisions of Section 5.3 of Article V of this Agreement (concerning the distribution of assets upon dissolution) shall survive such termination.

Section 6.2. Termination. Either party may terminate this Agreement on sixty (60) days written notice to the other party if the party to whom such notice is given is in material breach of this Agreement. The party claiming the right to terminate hereunder shall set forth in such notice the facts underlying its claim that the other party is in breach of this Agreement. Remedy of such breach within thirty (30) days of the receipt of such notice shall prevent the termination of the Agreement.

Section 6.3. Termination in Event of Foundation's Loss of Auxiliary Organization Good Standing. If and when the President or other designee of the District has reason to believe that the Foundation should be removed from the District's list of auxiliary organizations which are in good standing (the "Good Standing List"), that person shall give the Foundation's board of directors reasonable notice that a conference will be held to determine whether grounds for removal of the Foundation from the Good Standing List do in fact exist. Representatives of the Foundation's board of directors shall be entitled to be present at such conference and to be heard. Based upon such conference, the Chancellor or such other District designee shall recommend to the District Board of Trustees whether the Foundation should be removed from the Good Standing List, after which the District Board of Trustees, in its sole discretion, may remove the Foundation from said Good Standing List. Notwithstanding the terms of section 6.2, above, this Agreement shall immediately terminate on the Foundation's removal from the Good Standing List. In the event that the Foundation is removed from the Good Standing List, the Foundation shall promptly wind up its affairs and dissolve.

Section 6.4. Effects of Termination. Upon termination of this Agreement, neither party shall have any further obligation hereunder except for (1) obligations occurring prior to the date of such termination; and (2) obligations, promises, or covenants contained herein which

expressly extend beyond the term of this Agreement, including but not limited to those set forth in this Section. Upon termination or expiration of this Agreement, the Foundation shall within thirty (30) days of such termination or expiration (1) vacate any District facilities and/or real property the Foundation is occupying; (2) return all District equipment and supplies to the District; (3) transfer all documents and records in its possession relating to its administration of the services, programs, functions or activities described in Section 1.2 of Article I of this Agreement to the District; and (4) perform all other obligations required of the Foundation under the terms of this Agreement.

Section 6.5. Non-Assignability; Amendment. This Agreement, either in whole or in part, is not assignable by the Foundation. This Agreement may not be altered or modified except by a writing signed by the parties.

Section 6.6. Notices. Any notice, request, information or other document to be given hereunder to any party by any other party shall be in writing and shall be deemed given and served upon delivery, if delivered personally, or three (3) days after mailing if sent by certified mail, postage prepaid, as follows:

If to District:

MT. SAN ANTONIO COLLEGE

Attn: PRESIDENT

With a copy to:

Atkinson, Andelson,
Loya, Ruud & Romo
12800 Center Court Drive
Cerritos, California, 90703

Attn: Cindy S. Arellano, Esq.

If to Foundation:

MT. SAC AUXILIARY SERVICES

Attn: _____

With a copy to:

_____, California _____

Attn: _____

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

Section 6.7. Headings. The titles and headings of the various sections of this Agreement are intended solely for convenience of reference and are not intended to explain, modify or place any construction on any of the provisions of this Agreement.

Section 6.8. No Waiver. A party's failure to insist on the strict performance of any covenant or duty required by this Agreement, or to pursue any remedy under this Agreement, shall not constitute a waiver of the breach or the remedy.

Section 6.9. Governing Law. The agreement shall be governed by and construed according to the laws of the State of California.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date set forth above.

MT. SAN ANTONIO COLLEGE

By: _____
_____, President/CEO

MT. SAC AUXILIARY SERVICES

By: _____
_____, Vice President
Administrative Services

APPENDIX A

The Foundation may occupy, operate and use District facilities designated as the Sac Book Rac (Bookstore), the Campus Cafe, Common Grounds, the Prime Stop, the Mountie Stop, Wow Food Truck, the concession stand at the Hilmer Lodge Stadium, and other one-time locations on campus as needed.

The Foundation will administer the functions and services related to these locations utilizing the trade fixtures, supplies and assets currently available for those operations.

In consideration for the use of these facilities and assets, the Foundation agrees to pay the District a total rental amount of \$10,000 representing a fair market value for the rental of such facilities, payable in one lump sum, by December 31, annually.