

**MASTER AGREEMENT BY AND BETWEEN  
NAPA VALLEY COMMUNITY COLLEGE DISTRICT  
AND  
NAPA VALLEY COLLEGE VITICULTURE AND WINERY  
TECHNOLOGY FOUNDATION**

THIS AGREEMENT is made and entered into this   Xth   day of   XXX  ,   2017  , by and between the Napa Valley Community College District, hereinafter referred to as "District," and the Napa Valley Community College Viticulture and Winery Technology Foundation, hereinafter referred to as "Auxiliary," an auxiliary foundation established and operated as an integral part of the District.

**I. RECOGNITION OF NAPA VALLEY COLLEGE VITICULTURE AND WINERY  
TECHNOLOGY FOUNDATION**

The Napa Valley College Viticulture and Winery Technology Foundation, a nonprofit public benefit corporation, is hereby authorized to operate as an auxiliary foundation of the Napa Valley Community College District pursuant to the provisions of Article 6 (commencing with §72670) of Chapter 6 of Part 45 of the Education Code, District Board Policy 3600, and with the express authorization of the Board of Trustees of the District.

**II. PURPOSE**

The purpose of this agreement is to establish the parameters of the relationship between the District and the Auxiliary. The intent of the Auxiliary is to provide benefits, including financial resources, to the District that have a fair market value far surpassing the value of any administrative services and facilities provided by the District to the Auxiliary under this agreement.

Administration by the Foundation of the functions and activities described herein, instead of administration by and through the District, is deemed to be more effective in accomplishing those functions and activities than would be possible under applicable law relating to alcoholic beverages and the usual governmental budgetary, purchasing, and other fiscal procedures. Further, the District expects to benefit from the experience and expertise of The Foundation.

**III. AREAS OF SERVICE**

The Auxiliary may administer functions or activities defined in Subchapter 4.5, Title 5, of the California Code of Regulations. Other services may be provided if first approved by the Board of Governors of the California Community Colleges.

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In carrying out these functions, the Auxiliary may receive funds and dispense funds received to promote the general welfare of the District, including, but not limited to, (1) supplementing the total program and activities of the District; (2) assisting in the promotion of educational services and facilities; and (3) aiding the District in fulfilling its role of providing a comprehensive program of service and education to the community.

#### **IV. AUTHORIZED CORPORATION FUNCTIONS AND ACTIVITIES**

The Auxiliary shall undertake administration of its functions, in support of the goals and objectives of the District as led by the District's Board of Trustees and President for the purpose of wine marketing, sales, licensure, compliance reporting, and similar activities related to commercial aspects of winery operations. Additionally, the Auxiliary is authorized to engage in activities to build public support for the District and the Viticulture and Winery Technology Program through public relations programs and similar undertakings.

The Auxiliary may be authorized by the District to perform additional services, programs, and functions in one or more written contracts between the Parties. The Corporation shall provide only those services, programs, and functions authorized by a written agreement with the District.

#### **V. USE OF FACILITIES AND PROPERTY**

The Auxiliary may occupy, operate, and use District facilities and property separately or jointly with the District as identified by agreement with the District. The Auxiliary may use, without charge, District's facilities, as identified in the Facilities Use Agreement between the District and Auxiliary, at times that they are not being used for District's purposes, to engage in Auxiliary business. Auxiliary use of District facilities and property shall only for those services and functions that are consistent with the policies, rules, and regulation which have been or may be adopted by the Board of Trustees of the Napa Valley College District. The right to use any of the District facilities or equipment included in this Agreement or amendments shall cease upon written notice by the Superintendent of the Napa Valley College District that the District needs the facilities.

#### **VI. REIMBURSEMENT FOR PERSONNEL, SERVICES AND FACILITIES**

A. Consistent with the requirements of Education Code, section 72670.5(c), the Auxiliary shall provide full reimbursement to the District for any services performed by the employees of the District under the direction of, or on behalf of, the Auxiliary. The District shall submit a quarterly invoice to the Auxiliary itemizing the amounts owed for services provided to the Auxiliary by the District pursuant to this Agreement. In preparing such invoices, the District shall offset the value of any goods, services or funds provided by the Auxiliary to the District, provided that such goods, services or funds were expressly requested or accepted by the District Superintendent/President, and for which the parties have entered into a separate

agreement that complies with State Contracting Manual, section 3.18 (C), and applicable state laws.

B. If the District elects to participate in any cooperative purchase agreement negotiated by the Auxiliary, it shall so notify the Foundation and any donation by the vendor which may be directly attributable to the purchase by the District shall be made directly to the District and not to the Auxiliary. Any such donations accepted by the Chancellor after the effective date of this Agreement shall not be included in the calculation of the fair market value of goods and services contributed by the Auxiliary pursuant to Paragraph A.

C. If the fair market value of goods, services, and funds provided by the Auxiliary to the District, as determined in Paragraph A above, surpasses the value of the personnel, facilities, and administrative services provided by the District to the Auxiliary under this Agreement, and as set forth in Paragraph A above, no reimbursement from the Auxiliary to the District shall be required. If the fair market value of the goods, services, and funds provided by the Auxiliary is less than the value of the personnel, facilities, and administrative services provided by the District to the Auxiliary under this Agreement, the Auxiliary shall reimburse the District for the difference pursuant to Paragraph A. All Agreements for such goods, services and funds must still meet the requirements set forth in Paragraph A above.

D. Accounting and record keeping services provided to the Auxiliary by the District shall be reimbursed by the Auxiliary. The independent CPA firm retained to audit the District will also audit the Auxiliary.

E.

F. The Auxiliary organization shall obtain the services and counsel of an attorney admitted to practice in the State of California whenever the need arises. The Auxiliary may reimburse the District for services received from the District's selected legal counsel.

## VII. COVENANT

During the term of this Agreement, the Auxiliary agrees to maintain its existence and to operate in accordance with Article 6 of the Education Code and with the regulations of Subchapter 4.5 of Title 5 of the California Code of Regulations, as well as the Napa Valley College District implementing regulations, titled *Regulations Concerning Auxiliary Organizations*, and District Board Policy 3600. Said District regulations are hereby incorporated into this Agreement as a term thereof.

## **VIII. SIGNS, FIXTURES, AND EQUIPMENT**

During the term of this Agreement, the Auxiliary shall have the right to place and attach fixtures, signs, and equipment in or upon facilities as authorized by the District Superintendent in writing as to the number, size, and location. Fixtures, signs, or equipment so erected, placed or attached by the Auxiliary are to be removed therefrom by the Auxiliary upon the termination of this Agreement.

## **IX. USE OF REGISTERED DISTRICT SYMBOLS AND IDENTITIES**

During the terms of this Agreement, the Auxiliary shall have the right to use the registered logos and signatures of the District and its college within the District provided that:

- Any use of the logos and signatures must comply with the Graphic Standards Manual; and
  - The use of the signature or logo must be within a context that does not imply that the document or publication is a product of the District or either college; and
- The document or publication clearly identifies the Auxiliary as the source of the materials.

## **X. RIGHT OF ENTRY**

At any time, the District and its agents shall have the right to enter facilities utilized by the Auxiliary for the purpose of examination or supervision.

## **XI. INDIRECT COSTS**

If the Auxiliary administers a federally sponsored program, it shall reimburse the District for indirect costs associated with the performance of services by the District for the Auxiliary relating to the federally sponsored project. Such reimbursement will take into consideration the District's federal indirect cost rate and the approved indirect cost allocation, if any, of the federal program award.

## **XII. DISPOSITION OF EARNINGS**

Income generated by the Foundation in excess of costs and provisions for equipment, maintenance, reserves, and working capital shall be used to benefit the District's instructional program in Viticulture and Winery Technology. Capital provisions shall be established by the Board of Directors of the Foundation ensure fulfillment by the Foundation of this agreement. The Board of Directors of the Auxiliary, subject to the terms and conditions of the District's *Regulations Concerning Auxiliary Organizations*, shall establish provisions for the acceptance, management and investment of gifts.

### **XIII. DISTRIBUTION OF ASSETS UPON CESSATION**

Upon cessation of operations of the Auxiliary under this Agreement, unless extended or renewed, the net assets of the Auxiliary shall be either distributed to the District or expended for the benefit of the District.

### **XIV. PUBLIC RELATIONS**

With respect to expenditures for public relations or other purposes which would serve to augment District appropriations for the operation of the District, the Auxiliary may expend funds in such amount and for such purposes as are approved by the Board of Directors of the Auxiliary. With respect to these expenditures, the Auxiliary may expend funds in such amount and for such purposes as are approved by the Auxiliary's Board of Directors. The board of directors shall file with the District Superintendent/President a statement of such policy on accumulation and use of public relations funds. The statement shall include the policy and procedure on solicitation of funds, source of funds, amounts, and purpose for which the funds will be used, allowable expenditures, and procedures of control.

### **XV. THIRD PARTY AGREEMENTS BY AUXILIARY**

The Auxiliary shall not enter into any contract that would obligate District facilities or equipment without the prior approval of the District.

### **XVI. INSURANCE INDEMNIFICATION AND RESTORATION**

The Auxiliary and its directors, officers, and agents shall be included in the District's insurance policies for all of its regular functions, including liability for actions, covered perils, errors and omissions, and similar coverages; workers' compensation and employee fidelity bonds are specifically excluded under this agreement. When special events are sponsored by the Auxiliary, the District may require separate insurance coverage to be provided by the Auxiliary, in a form acceptable to the District's Risk Management function and at the expense of the Auxiliary. Losses incurred by the Auxiliary because of deductibles or exclusions on insurance provided by the District shall be borne by the Auxiliary.

The Auxiliary agrees to indemnify, defend, and save 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 operation of the Auxiliary or the use of District facilities by the Auxiliary in connection with this Agreement.

The District agrees to indemnify, defend, and save harmless the Auxiliary, its officers, agents, and employees from any and all loss, damage, or liability that may be suffered or caused by, arising out of, or in any way connected with the operation of the District in connection with this agreement.

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Approved by the NVC VWT Foundation Board of Directors, XX/XX/XX

Upon termination of this Agreement, the District shall have the option to require the Auxiliary, at the Auxiliary's own expense and risk, to restore all facilities utilized by the Auxiliary as nearly as possible to the condition existing prior to the commencement of use of the facilities by the Auxiliary. If the Auxiliary shall fail to do so within ninety (90) days after the District exercises said option, the District may restore the property at the expense of the Auxiliary and any and all costs and expenses of such removal or restoration shall be paid by the Auxiliary upon the 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.

#### **XVII. REAL PROPERTY**

The Auxiliary shall not enter into any transaction concerning the purchase, sale, lease, lease hold, or rental of real property without the prior approval of the District Superintendent.

#### **XVIII. NON-ASSIGNABILITY**

This Agreement is not assignable by the Auxiliary, either in whole or in part, nor shall the Auxiliary permit anyone else to use the described facilities or any part thereof without written permission of the District Superintendent.

#### **XIX. TERM OF AGREEMENT**

This Agreement may be terminated by either party giving ninety (90) days' written notice, subject to the provisions of this Agreement entitled "Distribution of Assets Upon Cessation."

The Auxiliary must remain in good standing with the District. If the Auxiliary is removed from the list of auxiliary foundations in good standing, this Agreement will immediately terminate, and the Auxiliary must terminate any contracts with third parties and comply with the provisions of this Agreement entitled "Distribution of Assets Upon Cessation."

#### **XX. NOTICE**

All notices required to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and received by the Auxiliary or the District Superintendent.

Notices to the Auxiliary shall be addressed as follows:

Napa Valley College  
Viticulture and Winery Technology Foundation  
2277 Napa-Vallejo Highway  
Napa, California 94558

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Notices to the District shall be addressed as follows:  
Superintendent/President  
Napa Valley College  
2277 Napa-Vallejo Highway  
Napa, California 94558

**XXI. ACTIVITIES REPORT**

The Auxiliary shall provide, no later than September 30 of each year, a report of all functions and activities maintained by the Auxiliary during the preceding school year. This report will include a full accounting of the costs of the facilities and services provided to the Auxiliary by the District and the value of the benefits provided by the Auxiliary to fully compensate the District as required by Title 5.

IN WITNESS WHEREOF, this Agreement has been executed in duplicate by the parties hereto as of this XXth day of XXXX, 2017.

Rafael Rios,  
President  
Board of Trustees  
Napa Valley Community College District

\_\_\_\_\_  
Date: XX/XX/XX

Ronald D. Kraft, Ph.D.  
Chair  
Board of Directors  
Napa Valley College Viticulture & Winery  
Technology Foundation

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Date: XX/XX/XX

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