Memorandum of Understanding

between

Palo Verde Community College District

and

Palo Verde College Foundation

This Memorandum of Understanding (hereinafter referred to as the "MOU"), made this _____ day of _____ between the Palo Verde College Foundation (hereinafter referred to as "FOUNDATION") and the Palo Verde Community College District (hereinafter referred to as "DISTRICT") for the purpose of developing resources to support college programs.

RECITALS

Whereas, the DISTRICT is a California Community College District serving the educational needs of the residents and businesses located within its district boundaries; and,

Whereas, the DISTRICT operates Palo Verde College in Blythe, California and the Palo Verde College Educational Center in Needles, California; and,

Whereas, the DISTRICT recognizes the need to develop alternative resources through grants, contract education, community education and charitable programs; and,

Whereas, the FOUNDATION has expertise in providing resource development services to benefit the district; and,

Whereas, the FOUNDATION desires to expand the services provided in these above mentioned areas for the DISTRICT and the DISTRICT likewise wishes for the FOUNDATION to provide additional services as defined in this MOU; and,

Whereas, the FOUNDATION is an auxiliary organization to the DISTRICT as defined by the Attorney General of the State of California in Opinion #97-1105 and is established for the sole benefit of the DISTRICT,

THEREFORE, the parties agree to the following provisions:

1. PURPOSE

The purpose of this MOU is to permit the FOUNDATION to serve as the agent for the DISTRICT with regard to marketing, acquisition and management of certain resource development activities including grant solicitation, contract education, community education, and charitable giving programs, subject to the limitations of authority herein described.

2. TERM:

The term of this MOU shall be for a period of three and one-half years or 42 consecutive months commencing on January 1, 2016 and ending on June 30, 2019. This MOU may be renewed for an unlimited number of successive 3 years terms provided all parties so agree in writing prior to the expiration date of the initial or any subsequent 3 year term.

3. RESPONSIBILITIES OF PARTIES

The FOUNDATION will

GRANTS

1. Identify and recommend grant opportunities from any and all sources that will benefit the DISTRICT mission.
2. Upon approval by the DISTRICT, develop and prepare grant proposals, negotiate partnerships as needed to facilitate projects within these proposals and coordinate submission of grant proposals on behalf of the DISTRICT.
3. Coordinate approvals required for all grant agreements.
4. Provide orientation to DISTRICT personnel who will be involved in implementing grant provisions.

CONTRACT EDUCATION

5. Identify and solicit contract education clients on behalf of the college; present contract education opportunities for pre-approval to the DISTRICT prior to negotiation whenever possible.
6. Upon approval by the DISTRICT, develop contract education proposals and negotiate terms of these proposals on behalf of the DISTRICT.
7. Coordinate approvals required for all contract education agreements.
8. Coordinate, subject to approval by the DISTRICT (office of instruction) the logistics of delivering contract education services including recruitment and contracting of approved faculty, and scheduling of appropriate facilities and securing supplies as needed for classes.
9. Provide orientation to DISTRICT personnel who will be involved in implementing contract education provisions.
10. Direct the invoicing of and participate in follow up with contract education clients to collect payments for services provided.

COMMUNITY EDUCATION

11. Solicit proposals for community education workshops and classes; present proposals to the DISTRICT for approval.
12. Upon approval by the DISTRICT, coordinate contracts with community education instructors, identify classrooms and develop a community education program schedule for use in marketing the program.

13. Coordinate the marketing and advertising of community education classes within available DISTRICT budget.
14. Provide orientation to DISTRICT personnel including community education instructors involved in delivering classes to the public.

GENERAL OPERATIONS

15. Coordinate and direct charitable giving and social enterprise programs for the DISTRICT including annual fund, alumni giving, planned giving, corporate and individual major gifts, employee giving and fundraising events.
16. Participate in development of DISTRICT procedures related to the development and implementation of grants, contract education, community education and charitable giving programs.
17. Employ and manage its own staff to fulfill the terms of this agreement.
18. Provide an annual report of activities to the DISTRICT

The DISTRICT will

1. Provide access to DISTRICT systems necessary to carry out the terms of this MOU including purchasing, scheduling and registration.
2. Provide use of DISTRICT furniture and computer workstations as required by FOUNDATION for carrying out the terms of this MOU.
3. Provide payroll and benefit services for all FOUNDATION employees.
4. Provide access to DISTRICT resources as traditionally available to support grant solicitation, contract and community education programs.
5. Annually establish a budget for expenses, other than salaries, required to advertise and promote contract education and community education programs including printing of schedules, development of advertising and marketing materials

4. LIMITS OF AUTHORITY

Under this MOU, while the FOUNDATION will manage and market these programs on behalf of the DISTRICT, the DISTRICT retains all control of educational quality, programming, and marketing images /messages with the full right to refuse any recommendation by the FOUNDATION. The DISTRICT may deny any grant or contract proposed or secured by the FOUNDATION.

The DISTRICT's approval of any grant agreement or contract secured by the FOUNDATION will obligate the DISTRICT to performing the provisions of the award. The FOUNDATION assumes no liability for the DISTRICT's failure to perform under the terms of grants and contracts secured through this partnership.

5. FINANCIAL CONSIDERATIONS

The DISTRICT agrees to carry an accounts receivable for Foundation staff salaries and benefits for up to 42 months and the FOUNDATION agrees to be responsible for repaying this obligation in cash or in-kind.

1. The DISTRICT agrees to accept the total proceeds of grants, contract education, community education and charitable contributions resulting from all FOUNDATION activities as in-kind payment for accrued salaries and benefits provided these proceeds exceed the amount owed by a ratio of at least 3:1. These in-kind proceeds will include, but not be limited to, grants, contracts, gifts and other revenues generated for the direct support of DISTRICT programs regardless of the amount of any indirect rate or profit that may be embedded within them. The DISTRICT may consider a prorated scale for acceptance of proceeds less than a 3:1 ratio as partial in-kind repayment of accrued salaries at its sole discretion. Any difference between what is accepted by the college as partial repayment and what has been accrued by the FOUNDATION shall be the responsibility of the FOUNDATION to repay directly.

2. Recognizing that the FOUNDATION is an independent organization which engages in activities beyond the scope of this agreement, the following will not be applied to the calculation of in-kind proceeds for the purpose of repayment of accrued FOUNDATION salaries:
   - Charitable donations that are used to establish unrestricted endowments within the FOUNDATION. (Proceeds from these endowments may be counted when they are distributed for the benefit of DISTRICT programs.)
   - Donations made for the purpose of student scholarships or the endowment of student scholarships.
   - Non-cash gifts valued at less than $5,000 such as book collections, used vehicles, and consumable materials.
   - Non-cash assets held in ownership by the FOUNDATION. (Proceeds from these assets may be applied when they are distributed for the benefit of DISTRICT programs.)

3. All other proceeds not listed above will be applied to the terms of this agreement as stated in 5.1 above.

The DISTRICT administration shall develop a procedure for applying these proceeds to credit the FOUNDATION account in accordance with this MOU.

6. SERVICES BEYOND THE SCOPE OF THIS AGREEMENT

Both parties agree that from time to time there may be additional services related to grants, contract education, community education and charitable giving programs for which the DISTRICT may need support. These services may include, but are not limited to, project management, administration, reporting and / or delivery of non-educational related services for grants and contracts.

The FOUNDATION will be given due consideration for the opportunity to provide these additional services as needed by the DISTRICT. When such services are required, a written amendment to this MOU which identifies the specific services requested and the financial consideration to be provided shall be approved by both parties to be incorporated herein.

7. CANCELLATION

The nature of these services requires consistent development that may be disrupted by premature cancellation. For this reason, cancellation is discouraged. However, the DISTRICT shall retain the right to cancel the MOU at any time with 60 days written notice to the FOUNDATION provided the DISTRICT agrees to accept responsibility for repayment of all salaries accrued by the FOUNDATION through the date of cancellation.

8. DISPUTE RESOLUTION

As this MOU is intended to promote mutual benefit of the parties involved, it is agreed that, in the event of a dispute arising from the terms of this MOU, a good faith effort shall be made to resolve the issues amicably. Should informal corrective processes fail the MOU may be terminated as set forth in Section 7.

9. APPROVALS AND AUTHORIZATIONS OF MOU

Each party to this MOU ("Such Party") represents and warrants that (1) Such Party has all necessary power and authority to execute and deliver this MOU and to perform all the terms and conditions of this MOU to be performed by Such Party; (2) no other proceedings on the part of Such Party are necessary to authorize this MOU or to perform the obligations of Such Party under this MOU; (3) this MOU has been duly executed and delivered by Such Party and constitutes the legal, valid and binding obligations of Such Party, enforceable against Such Party and it in accordance with its terms; and (4) the execution and delivery by Such Party of this MOU do not, and the compliance by Such Party with the provisions hereof will not conflict with, or result in any violation of, or constitute a default under any provision of the articles of incorporation or bylaws of Such Party or any other agreement binding Such Party.

10. INVALIDITY

It is the intent of the parties that the provisions of this MOU are all material and necessary for achieving the goals and objectives of the parties. Accordingly, in the event that any paragraph or provision is held to be invalid or unenforceable for any reason, the parties agree to negotiate in good faith to revise the subject paragraph or provision so that it is valid and enforceable and is consistent with the intent of the parties or to sever it from the MOU while preserving the basic financial and professional relationships established herein. If after due negotiations the parties are unable to resolve the issues so as to modify the invalid and unenforceable paragraph or provision, then any party hereto shall have the right to terminate this MOU as provided in Section 9 of this MOU as written.

11. LIMITATIONS

Nothing in this MOU suggests that either party shall be subject to the employment practices of the other party with respect to their own employees.

12. FURTHER ACTS

Each party to this MOU agrees to perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this MOU.

13. CONSTRUCTION

This MOU and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of California. Should any provision of this MOU require interpretation by a court of competent jurisdiction, it is agreed by the parties that the court interpreting this MOU shall not apply a presumption that the terms of this MOU shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party whose agent prepared such document, it being agreed that the agents of all parties have participated in the preparation of this MOU.

14. CAPTIONS

Section headings are inserted in this MOU solely for the purpose of convenience of reference and shall not be construed as part of this MOU.

15. LEGAL EXPENSES

If a legal proceeding is brought for the enforcement of this MOU, or because of any alleged or actual dispute, breach, default or misrepresentation in connection with any of the provisions of this MOU, the parties hereto agree that each shall bear its own attorney's fees and other costs incurred in that action or proceeding in addition to any other relief to which such party may be entitled.

16. NOTICES

All notices, requests, demands, and other communications under this MOU shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or within seventy-two (72) hours after mailing, if mailed to the party to whom notice is to be given, by first class mail, postage prepaid, return receipt requested, and properly addressed to the party at the address indicated below, or any other address that any party may designate by written notice to the others.

Palo Verde College Foundation
c/o PVC Foundation President
One College Drive
Blythe, CA 92225

Palo Verde Community College District
c/o Superintendent / President
One College Drive
Blythe, CA 92225

17. WAIVER

The waiver by any party hereto of a breach of any provision of this MOU by another party shall not operate or be construed as a waiver of any subsequent breach of the same provision or any other provision of this MOU.

18. REPRESENTATIONS OF PRIOR CONTRACTS

Each party to this MOU ("Such Party") represents and warrants to all of the other parties that no prior contract or agreement of any kind entered into by Such Party or any prior performance by Such Party will interfere in any manner with Such Party's complete performance of Such Party's duties and obligations hereunder or with Such Party's compliance with the other terms and conditions hereof, and that Such Party has the ability to perform all of Such Party's obligations under this MOU without the participation or consent of any other person or entity.

19. GOVERNING DOCUMENTS / SEVERABILITY OF TERMS

The terms of this MOU and all obligations hereunder are to be interpreted consistently with the Master Agreement. Should any term herein be inconsistent with or contrary to the terms of these, the terms of Master Agreement shall govern and the term herein shall be invalid. Should any term be deemed invalid, it shall be considered severed from this MOU and the remaining terms hereof shall remain in full force and effect.

20. CONFIDENTIALITY

Both parties agree that from time to time each may be made aware of certain information believed confidential in nature. Each party agrees to keep confidential such information, as requested, or which may be deemed injurious to, or adversely affect the business of the other party.

21. BINDING AGREEMENT

The rights and obligations of the parties under this MOU may not be assigned without the written consent of all parties to this MOU. However, the rights and obligations of the parties shall inure to the benefit of and shall be binding upon and enforceable by the heirs and successors of such parties.

22. COUNTERPARTS

This MOU may be executed in one or more counterparts, and may be exchanged by fax transmittal, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In addition, the signatures to this MOU may be made by fax transmission, and the fax transmittal signature may be attached to this MOU as if it was an original.

23. AMENDMENTS

This MOU shall not be modified, amended or in any way altered except by an instrument in writing and signed by both of the parties hereto.

24. GENDER

As used in this MOU, the masculine, feminine, or neuter gender, and the singular or plural number shall each be deemed to include the others whenever the context so indicates.

IN WITNESS WHEREOF, the parties have executed this MOU as of the date first above written.

Palo Verde College FOUNDATION

By: _____

Teresa Houston, President

Palo Verde Community College DISTRICT

By: _____

Donald G. Wallace, Superintendent / President