

**MEMORANDUM OF UNDERSTANDING BETWEEN MT. DIABLO UNIFIED SCHOOL DISTRICT AND THE MDUSD EDUCATION FOUNDATION**

This Memorandum of Understanding (MOU), originally made \_\_\_ day of \_\_\_\_\_ , 2018, by and between the Board of Trustees of the Mt. Diablo Unified School District (District) and the MDUSD Education Foundation (Foundation) (an Internal Revenue Code 501(c)(3) nonprofit corporation), is intended to set forth policies and procedures that will contribute to the coordination of their mutual activities. District and Foundation are hereinafter individually referred to as “Party” and collectively referred to as the “Parties.”

**RECITALS**

**WHEREAS**, Foundation was organized and incorporated in 2017 for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, foundations, and others for the benefit of the District;

**WHEREAS**, Foundation is dedicated to assisting the District in the building of its endowment and in addressing, through financial support, the long-term academic and other priorities of the District;

**WHEREAS**, Foundation’s mission and objectives as stated in its by-laws is to promote excellence in the educational experience of students who reside in and attend schools governed or authorized by the District;

**WHEREAS**, as stated in its articles of incorporation, Foundation is a separately incorporated 501(c)(3) organization and is responsible for identifying and nurturing relationships with potential donors and other friends of the District;

**WHEREAS**, Foundation actively engages in development and solicitation of funding such as cash, securities, real and intellectual property, and other private resources to support the educational purposes of District from internal community members (parents of District students), external community members

(individuals/businesses in support of the District), corporations and private Foundations; and acknowledging and stewarding such gifts in accordance with donor intent and its fiduciary responsibilities;

**WHEREAS**, the public and charitable purposes of Foundation pertinent to this MOU are to direct attention and effort toward providing funding to support the educational purposes of District;

**WHEREAS**, the Parties recognize that partnerships and alliances are needed to attract the greatest number of funding opportunities for District. To enhance this effort, the Parties have formed a voluntary relationship that is described in this MOU;

**WHEREAS**, pursuant to California Education Code section 41032(a) and District Board Policy 3290, the District may accept gifts or donations subject to conditions or restrictions that the District's Board of Trustees may prescribe;

**WHEREAS**, pursuant to District Board Policy 3290, the District must consider whether acceptance of a gift or donation implies endorsement of any business or product or is inconsistent with the District's vision and philosophy;

**WHEREAS**, this MOU describes the consensual understanding and expectations of the Parties, not a change in the governance of either Party. This MOU also outlines the responsibilities of both District and Foundation.

In consideration of the mutual commitments herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

**I. Foundation Name, Seal and Logotype**

Consistent with its mission to help to advance the plans and objective of District, Foundation is granted the use of the name, "Mt. Diablo Unified School District"; however, Foundation will operate under its own seal and logotype and shall not use the

District seal or other identifying marks in the promotion of its business and activities, nor shall Foundation be authorized to use the “Mt. Diablo Unified School District” name for any purpose outside of this MOU.

## **II. Institution/System Governance**

~~The Board of Trustees of District under law sets the mission, provides the leadership, and oversees the operation of the District. The Board of Trustees of District sets priorities and long-term plans for the District. The Board of Trustees of District has ultimate oversight responsibility for all aspects of District operations. The Board of Trustees of District is ultimately responsible for the employment, compensation, and evaluation of all District employees via District Administration. The Board of Trustees of District is responsible for overseeing the mission, leadership, and operations of the District. The Board of Trustees of District is responsible for setting priorities and long-term plans for the District. The Board of Trustees of District is legally responsible for the performance and oversight of all aspects of District operations. The Board of Trustees of District is responsible for the employment, compensation, and evaluation of all District employees.~~

## **III. The Foundation’s Relationship with District**

A. The Foundation is a separately incorporated 501(c)(3) non-profit organization created to raise, manage, distribute, and steward private resources to support the mission of District. The Foundation board of directors is responsible for control and management of all assets of the Foundation, including the prudent management of all gifts consistent with donor intent.

B. The Foundation is responsible for the performance and oversight of all aspects of its operations based on a comprehensive set of bylaws that clearly address the board’s fiduciary responsibilities, including expectations of individual board members based upon ethical guidelines and policies.

C. The Foundation is responsible for recruiting and maintaining board members that are in agreement and committed to the mission of the District.

## **IV. District’s Relationship with the Foundation**

A. District Board of Trustees will communicate District priorities and long-term plans, as the Board deems necessary and approved by it, to Foundation.~~District Board of Trustees is responsible for communicating District priorities and long term plans, as approved by the District board, to Foundation.~~

B. The Foundation does not receive any funding from District as compensation for services rendered.

**V. FOUNDATION Responsibilities**

A. Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of District.

B. Foundation agrees to use its best efforts to promote the development work of Foundation on behalf of District.

C. Foundation shall provide insurance coverage to the extent required by the terms and conditions of any grant or donation and shall include District as an additional insured to the extent permitted by the terms and conditions of insurance policies presently in effect.

D. Foundation is responsible for planning and executing comprehensive fund-raising and donor-acquisition programs in support of the District's mission. These programs include major gifts, planned gifts, special projects, and campaigns as appropriate.

E. Foundation will establish, adhere to, and periodically assess its gift-management and acceptance policies. It will promptly acknowledge and issue receipts of all gifts on behalf of Foundation and provide appropriate recognition and stewardship of such gifts.

F. The Foundation shall not accept grants from state or federal agencies, except in special circumstances that are approved by the Foundation Board of Directors and District Board of Trustees.

G. The Foundation shall establish and enforce policies to protect donor confidentiality and rights, to the extent permitted by law, but agrees that the District is

a public agency bound by the laws of the State of California and the United States of America on issues of accountability, privacy, and transparency.

## **VI. DISTRICT Responsibilities**

A. District agrees to use its best efforts to promote the development work of Foundation on behalf of District.

B. District will work in conjunction with the leadership of Foundation to identify, cultivate, and solicit prospects for private gifts.

C. District will conduct strategic planning in order to determine the level of fundraising to be undertaken by Foundation.

D. District shall use its best efforts to provide information and/or materials to Foundation deemed necessary to further Foundation's development goals and activities, such as lending translation equipment, allowing Foundation to access printshop at cost, and waiving fees for meeting space in district offices and schools. District will include Foundation in school registration forms, including listing Foundation in media release form and providing parents the option to allow their contact information to be shared with Foundation.

## **VII. Asset Management**

A. The Foundation will establish asset allocation, disbursements, and spending policies that adhere to applicable federal and state laws. To the extent that any of these policies affect the District in any way, Foundation shall not approve any such policies without the prior review and comment of the District. The Foundation's asset allocation, disbursements, and spending policies shall include the following:

1. The Foundation shall make a record of all donations, indicating the name of the donor (or referenced as an anonymous donation where applicable), amount of donation, and purpose of the donation.

2. The Foundation shall manage its funds in a fiscally prudent manner; principal shall not be placed at risk. Interest-bearing accounts should be used when appropriate. Funds shall be maintained at a federal or state chartered bank, savings and loan, or credit union. Funds received by the Foundation will be held in a separate interest-bearing account, or other appropriate account, pending disbursement of the funds to the District in accordance with this MOU and any policies approved by the District hereinafter.

3. The Foundation shall screen all donor recognition requests to ensure that such items are in compliance with the requirements set forth in this MOU and District policy.

B. The Foundation will receive, hold, manage, invest and disburse contributions, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred gift instruments.

C. The Foundation shall not accept any gift, donation, or grant which creates a future liability for District, or which may directly or indirectly impair the District's commitment to providing equal educational opportunities for all District students, without the advance written approval of District.

D. When proposing distribution of funds to District, the Foundation will disclose any terms, conditions, or limitations imposed by the donor or legal determination of the gift. If approved by the Board of Trustees, or its designee, the District will abide by such restrictions and provide appropriate documentation when required. The District will provide regular and timely financial reports to the Foundation on the disbursement and use of Foundation funds, including a status report for each program or project funded in full or in part by Foundation.

E. The Foundation will prepare an annual report from the fiscal year-end report and audit and post this on the Foundation website each summer. The Foundation will also share its 990 when requested.

F. The Foundation's disbursement on behalf of the District must be reasonable expenses that support the institution and its mission, are consistent with donor intent, and do not conflict with the law.

### **VIII. Foundation Funding and Administration**

A. On an annual basis, Foundation shall prepare a financial plan to underwrite the cost of Foundation programs, operations, and services.

B. Foundation, at its own expense, will provide office supplies and other services that may be necessary or required to fulfill its responsibilities and obligations. Members of Foundation and its board of directors participate on a volunteer basis and are not compensated for their time or services.

C. Foundation shall maintain copies of the plans, budgets, and donor and alumni records developed in connection with the performance of its obligations.

D. Foundation will provide access to data and records to District in accordance with applicable laws, Foundations policies, and guidelines. Foundation will provide copies of its annual report and other information that may be publicly released. The District may review the Foundation's financial statements at any time upon the written request of the District. The Foundation shall respond to such a request within ten (10) business days.

E. If the Foundation determines that the advice and counsel of a licensed certified public accountant is necessary for any activities pursuant to this MOU, Foundation shall retain such services in a diligent and prudent manner.

### **IX. General Terms and Conditions**



A. This MOU may be amended at any time by approval of the District and Foundation Board of Directors. However, no amendment of this MOU will be effective unless reduced to writing and executed by both Parties.

B. To ensure effective achievement of the items of the MOU, District and Foundation officers and board representatives shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities. As such, both Parties agree to develop and deliver a consistent, collaborative message describing District, Foundation and its partnership as described in this MOU, and to update each other on independent organizational decisions, activities, changes or events that may affect the partnership in any way.

C. Either Party may, upon ninety (90) days prior written notice to the other, terminate this MOU. Notwithstanding the foregoing, either Party may terminate this MOU in the event the other Party defaults in the performance of its obligations and fails to cure the default within sixty (60) days after receiving a written show of cause notice. Upon termination of this MOU by the District for such cause, all funds generated pursuant to this MOU remaining at the time of termination shall be distributed to the District or to another entity of the District's choosing. The Foundation, its officers, agents, and volunteers upon this notice shall cease fundraising on behalf of the District under this MOU.

D. Consistent with provisions appearing in Foundation's bylaw and its articles of incorporation, should Foundation cease to exist or cease to be an Internal Revenue Code 501(c)(3) organization, Foundation will transfer its assets and property generated pursuant to this MOU remaining at the time of termination to an organization of the District's choosing dedicated to charitable purposes which has established its tax exempt status under Section 501(c)(3) of the Internal Revenue Code and that supports education in the District. In this event, the Foundation, its officers, agents, and volunteers, shall cease fundraising on behalf of the District under this MOU.

E. The Foundation shall not, at any time or in any manner, represent that it or any of its principals, employees, or volunteers, when acting as a principal, employee, or a volunteer for the Foundation, are employees of the District. The Foundation shall not have any claim or right to any benefits or privileges available to an employee of the District such as retirement, health insurance and other similar benefits. The District shall not in any way or for any purpose become or be deemed to be a legal partner of the Foundation or otherwise or a joint venturer or a member of any joint enterprise with the Foundation.

F. No waiver of the breach of any of the covenants, agreements, restrictions, or conditions of this MOU by either Party to this MOU shall be construed to be a waiver of any succeeding breach of the same or other covenants, agreements, restrictions, or conditions of this MOU. No delay or omission of either Party to this MOU in exercising any right, power or remedy herein provided in the event of default shall be construed as a waiver thereof or acquiescence therein, or be construed as a waiver of a variation of any of the terms of this MOU.

G. Each Party to this MOU shall indemnify and hold harmless the other Party, its officers, agents, employees, and assigns from and against all claims, losses, costs, damages, expenses, reasonable attorneys' fees, and liability that may be sustained as a result of any failure of a Party to comply with any applicable law, ordinance, regulation, or industry standard; as a result of any breach by a Party of a provision of this MOU; or as a result of any acts or omissions or caused by the negligence of a Party in connection with performance of duties pursuant to this MOU.

H. This MOU shall be governed by and construed in accordance with the laws of the State of California. This MOU is made, entered into, executed and is performed in Concord, California, and any action filed in any court or for arbitration for interpretation, enforcement and/or otherwise of the terms, covenants and conditions referred to herein shall be filed in the applicable court in Contra Costa County, California.

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I. The invalidity of any provision of this MOU, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

J. This MOU, either in whole or in part, is not assignable by the Foundation. This MOU may not be altered or modified, except by a writing signed by the Parties.

K. This MOU may be executed in one or more counterparts, with the same force and effect as if executed in one complete document. This MOU may be executed by facsimile signature or other electronic copy of the signature such as PDF format, and an electronic or facsimile signature shall have the same force and effect as an original.

L. This MOU represents the entire understanding of the Parties and supersedes any understanding agreement or representation, whether oral or in writing, made prior to the effective date. Any prior agreements or understandings, written or verbal, are superseded by this MOU.

IN WITNESS WHEREOF, the Parties have caused this Memorandum of Understanding to be executed by their duly authorized officers as of the day and date first above written

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President, Board of Trustees, MDUSD  
Mt. Diablo Unified School District

Date:

\_\_\_\_\_  
President, Board of Directors  
MDUSD Education Foundation

Date: