

# MASTER OPERATING AGREEMENT

## BY AND BETWEEN THE CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT AND LAS POSITAS COLLEGE VITICULTURE & ENOLOGY FOUNDATION

This Master Operating Agreement (the “**Agreement**”) is made and entered into this 18th day of June, 2018 (the “**Effective Date**”) by and between the CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT (the “**District**”) and the LAS POSITAS COLLEGE VITICULTURE & ENOLOGY FOUNDATION (the “**Foundation**”), a California nonprofit public benefit corporation established and operated to support the Las Positas College (the “**College**”) educational and cultural programs in the areas of Agribusiness, Viticulture and Enology, as well as operate certain facilities related to such programs. The District and Foundation are referred to collectively herein as the “**Parties.**” The College is not a party to this Agreement, but is a beneficiary of the Agreement, and the Foundation’s services identified herein.

### ARTICLE I RECOGNITION

The Foundation, through its Board of Directors, seeks to be designated by the District’s Board of Trustees as an Auxiliary Organization in accordance with all of the provisions of Education Code section 72670 et seq. and title 5, section 59250 et seq. of the California Code of Regulations. This Agreement is intended to meet the requirements set forth in title 5, section 59251, subdivision (b) and 59255, subdivision (e) of the California Code of Regulations for a written agreement between the Foundation and the District, which must be submitted to the State Chancellor for approval, along with copies of the Foundation’s Articles of Incorporation and Bylaws.

The method by which the Foundation will be recognized as a District Auxiliary Organization is as set forth in District Board Policy 3600, which requires a public hearing on the recommendation to recognize the Foundation as an auxiliary organization; Board approval of the Foundation, and approval of this Agreement describing the services, programs and functions to be performed by the Foundation. It is understood that this Agreement shall not go into effect unless and until the State Chancellor approves establishment of the Foundation as an auxiliary organization.

### ARTICLE II PURPOSE

The purpose of the Foundation is to provide activities and perform functions which are integral to Las Positas College’s viticulture and enology programs. Administration by the Foundation of the functions and activities described herein, instead of administration by and through the District or College is deemed to be more effective in accomplishing those functions and activities than would be possible under usual governmental budgetary, purchasing, and other fiscal procedures. Further, the District and College expect to benefit from the experience and expertise of the Foundation.

**ARTICLE III**  
**FOUNDATION FUNCTIONS AND AREAS OF SERVICE**

All services, programs and activities that may be undertaken by the Foundation shall be maintained for the general benefit of the College's viticulture and enology programs as described in this Article. The Foundation, with agreement of the District and through amendments to this Agreement, may administer those functions or activities defined in title 5, section 59259 of the California Code of Regulations, which are mutually agreed upon by the parties. The parties mutually agree that the Foundation will provide the following services and perform the following functions:

1. Provide the fiscal means and the management procedures that allows the District to carry on educationally-related activities not normally funded by the State;
2. Eliminate the undue difficulty that would otherwise arise under the usual governmental budgetary, purchasing, and other fiscal controls;
3. Provide fiscal procedures and management systems that allow effective coordination of Foundation activities with the District in accordance with sound business practices;
4. Benefit the District and College with the experience and expertise of the Foundation;
5. Promote, administer, and provide students of Las Positas College with educational programs, workshops, conferences, institutes, and work experience in the field of viticulture and enology;
6. Administer facilities and equipment relating to the College's viticulture and enology programs;
7. Administer alumni activities relating to the College's viticulture and enology programs;
8. Solicit and administer gifts, bequests, devises, endowments and trusts relating to the College's viticulture and enology programs;
9. Administer public relations programs related to the College's viticulture and enology programs; and
10. Other services, programs, functions or activity, if such services are fist approved by the Board of Governors of the California Community Colleges and the Board of Trusts of the District.

In furtherance of its purpose and functions, the Foundation will be permitted to acquire, possess, and use wine and beer in connection with educational courses and District/College events upon receiving District or College approval for such activities, as required by District Board Policy 3560.

**ARTICLE IV  
LIMITATION OF AUTHORITY AND RESPONSIBILITY  
OF THE AUXILIARY ORGANIZATION**

The Foundation shall not offer programs or courses for which State funding is received.

In no case shall scholarships or grants-in-aid awarded to present or former students exceed the amount necessary to cover books, school fees, and approved costs of attendance. A record of such financial assistance shall be forwarded on a timely basis to the District and to the College financial aid office and shall be documented in student financial aid recipient records kept in those offices.

**ARTICLE V  
USE OF DISTRICT FACILITIES**

Neither the District, nor Las Positas College, currently provide the Foundation with space, equipment or furnishings to perform its activities; provided, at such time as the Foundation receives all government approvals to operate as a licensed winery in the state California, the Foundation shall have the right to occupy, operate and use District and College facilities defined in **Exhibit A** for licensed winemaking activities, including the sale and service of alcohol within the premises, all in accordance with applicable laws and regulations regarding the same.

Should the Foundation occupy, operate and use District and College facilities for licensed winemaking or other permitted purposes in the future, the Parties hereby agree that the Foundation shall reimburse the District for the Foundation's use of District facilities by paying a rental charge to the District for such use, as specified in Exhibit A. The rental charge shall not require involved methods of computation, and may be for less than fair rental value to the extent permitted by section 81440 (b) of the Education Code. The District shall provide the Foundation with at least ninety (90) days written notice prior to the end of any fiscal year in which the District changes the rental charge for the upcoming fiscal year. Such written notice, if any, shall specify the facilities to be utilized and the amount of rent to be charged on an annual basis. There shall be no charge to the Foundation for applicable remodel/renovation or reconstruction of District facilities should such changes be necessary for the performance of viticulture and enology programs.

The Foundation shall use District facilities and property only for those services and functions that are consistent with this Agreement and the policies, rules, and regulations, which have been or may be adopted by the District Board.

The right to use any of the District or College facilities or equipment included in this Agreement or amendments shall cease upon ninety (90) days written notice by the District's

Chancellor or the Chancellor's designee, that the facilities are needed for the exclusive use of the District or College.

**ARTICLE VI**  
**REIMBURSEMENT FOR DISTRICT SERVICES**

The Foundation shall provide full reimbursement to the District and College for the costs of services performed by District employees under the direction of the Foundation including, but not limited to, the salary and benefits of Foundation support staff employed by the District. The Foundation shall reimburse the District for that portion of the employee's full-time assignment (and corresponding benefits) that is spent in providing said services. Methods of proration where services are performed by District employees for the Foundation shall be simple and equitable. Notwithstanding the foregoing requirement for full reimbursement, up to 50% of the reimbursement by the Foundation may be made in the form of non-monetary benefits that the Foundation provides to the District or College, such as increased community awareness or other such benefits that are agreed upon by District officials and the Foundation. Such non-monetary benefits shall be assigned a good-faith reimbursement value by the District.

On an annual basis the District's Chancellor or the Chancellor's designee shall determine, in advance of the performance of such services, the cost and/or method for determining the amount to be reimbursed by the Foundation to the District and College for services provided by District employees to the Foundation including, but not limited to, Accounting, Computing/Technology Services, Custodial Services, Human Resources, Media Services, Payroll, Parking, and Purchasing, Programming, and other District or College services, as identified in amendments to this Agreement. Neither the District nor the College shall provide services to the Foundation unless the services to be provided and the Foundation's reimbursement obligations have been agreed upon in writing in advance.

The Foundation may provide services to the District or College for which the District or College shall reimburse the Foundation. If and when such service areas exist, they shall be identified in amendments to this Agreement.

The Foundation shall contract with the independent audit firm retained to audit the District to also audit the Foundation at the Foundation's expense.

**ARTICLE VII**  
**INDIRECT COSTS**

If the Foundation administers a federally-sponsored program, it shall reimburse the District and the College for indirect costs associated with the performance of services by the District and College for the Foundation relating to the federally-sponsored project. In advance of administering such program, the District and the Foundation agree to assign a simple and stable method for determining the extent of the Foundation's liability for indirect costs. Such liability will take into consideration the District's federal indirect cost rate and the approved indirect cost allocation, if any, of the federal program award.

**ARTICLE VIII  
MAINTENANCE AND OPERATING EXPENSES**

Should the Foundation use District or College property, as described in Article V of this Agreement, the District and College shall provide maintenance and custodial services to the Foundation in the same manner as they provide for their own offices. In such case, the Foundation agrees that it will keep and maintain the described facilities in a clean and orderly condition. If the Foundation uses District or College property, the Foundation shall reimburse the District and College for the appropriate apportionment of maintenance and custodial services provided by the District or College to the Foundation, in accordance with Article VI of this Agreement.

The Foundation shall reimburse the District and College for the appropriate apportionment of all other operating expenses, including but not limited to expenses associated with telephone and Internet services, copying, computers, and insurance coverage, as agreed upon by the parties each year.

**ARTICLE IX  
SUBMISSION OF ANNUAL PROGRAM AND BUDGET**

The Foundation's Board of Directors shall submit its program and budget for the next fiscal year to the College President and District Chancellor for the Chancellor's approval on or before May 15 of each year. Should the Chancellor determine that any program or appropriation planned by the Foundation is not consistent with the policies of the District's Board of Trustees, the program or appropriation shall not be implemented. Further, should a program or appropriation which had received approval, upon review, be determined by the District Chancellor to be operating outside of the scope of the policies of the District's Board, then that program or appropriation shall be discontinued by direction of the District Chancellor until further review is accomplished and an appropriate adjustment is made.

**ARTICLE X  
PUBLIC RELATIONS AND FUND DEVELOPMENT**

With respect to any expenditures for public relations and fund development or other purposes which would serve to augment District appropriations for the operation of the College, the Foundation may expend funds in such amount and for such purposes as are approved by the Board of Directors of the Foundation. The Foundation shall file with the College President and District Chancellor a statement of its policy on accumulation and use of public relations funds and fund development. The statement will include the policy and procedure on solicitation of funds, source of funds, purposes for which the funds will be used, allowable expenditures and procedures of control. Gifts to the District shall be accepted under the provisions of applicable District Board policy. Gifts to the Foundation shall be accepted as authorized by the Foundation's Board of Directors, on the condition that such gifts be used only for purposes consistent with District Board Policy.

**ARTICLE XI  
DISPENSATION OF EARNINGS**

Income generated by the Foundation in excess of costs and provisions for equipment, maintenance, reserves, and working capital shall be used for the general benefit of the students

and the College's educational and cultural programs in the areas of agribusiness, viticulture and enology, as well as to operate certain facilities related to such programs, as determined by the Board of Directors and approved by the Chancellor or Chancellor's designee, pursuant to Article IX of this Agreement.

**ARTICLE XII  
DISTRIBUTION OF ASSETS UPON CESSATION**

Upon dissolution of the Foundation or the cessation of operations of the Foundation under this Agreement, unless extended or renewed, the net assets of the Foundation shall be transferred to the District or a non-profit tax-exempt organization designated by the District for academic program development at Las Positas College. If such funds cannot reasonably be designated for academic program development at Las Positas College, such funds will be expended for the District's benefit. In the event the Foundation ceases to be an auxiliary organization it shall retain the assets it acquires in furtherance of this Agreement so long as it operates for the benefit of the College's educational and cultural programs in the areas of agribusiness, viticulture and enology.

**ARTICLE XIII  
COVENANTS**

During the term of this Agreement, the Foundation agrees to maintain its existence and to operate in accordance with Sections 72670-72682 of the California Education Code and with the sections 59250-59276 of the California Code of Regulations, title 5, as well as the Chabot-Las Positas Community College District Implementing Regulations as set forth in Board Policy 3600. To comply with this covenant, the Foundation shall:

- 13.1.** Compose its Board of Directors and Meet in Accordance with Education Code section 72674. Specifically, the Foundation's Board of Directors shall:
- a. Include not less than three (3) nor more than eleven (11) persons.
  - b. Be divided by lot into three (3) classes with staggered terms. The members of the first class shall hold office for a term of one (1) year; the members of the second class shall hold office for a term of two (2) years; the members of the third (3) class shall hold office for a term of three (3) years. At annual elections, directors shall be elected for a term of three (3) years to succeed the directors whose term then expires; provided that nothing herein shall be construed to prevent the election of the director to succeed himself.
  - c. Include as one of the authorized Directors, the then current President of Las Positas College as an ex officio Director.
  - d. Include as one of the authorized Directors, the then current Wine and Viticulture Program Director of Las Positas College as an ex officio Director.
  - e. Meet annually on the second Tuesday of April each year at 2:00 p.m. as the board may fix and at the offices of the corporation, or at such other time and date in the month of April as shall be determined by the Board or the President, and upon prior notice of at least thirty (30) days of such meeting being given to the Directors by first-class mail or personal delivery, for the purpose of organization, selection of directors and officers, and the transaction of other business.

- f. Hold a least one business meeting each quarter of each fiscal year.
- g. Have the benefit of the advice and counsel of at least one attorney admitted to practice law in this State. He/she need not be a member of the Board.
- h. Have the benefit of the advice and counsel of at least one licensed certified public accountant. He/she need not be a member of the Board.
- i. Conduct business in public meetings in accordance with the provisions of Chapter 9, commencing with section 54950, of Part 1 of the Government Code, also known as the Ralph M. Brown Act.
- j. Not accept any grant, contract, bequest, trust, or gift, unless it is so conditioned that it may be used only for purposes consistent with policies of the District's governing board.

**13.2.** Conduct Annual Audits in Accordance with Education Code section 72672. Specifically, such audits shall:

- a. Be conducted by a certified public accountant from the independent audit firm retained to audit the District.
- b. Be conducted in accordance with auditing standards generally accepted in the United States of America.
- c. Be conducted annually as part of a fiscal audit of the District itself with assistance from Foundation staff.
- d. Be published and disseminated as widely as feasible and be available to any person on request, except as otherwise provided by law.

**13.3.** Provide Salaries, Working Conditions, and Benefits for Full-Time Employees of the Foundation in Accordance with Education Code section 72672. Specifically, if and when the Foundation hires employees:

- a. The Foundation shall:
  - i. Provide salaries, working conditions and benefits for the full-time, permanent, employees of the Foundation which are comparable to those provided district employees performing similar services.
  - ii. For those full-time employees whose duties are not comparable to classes in the district, the salaries established shall be at least equal to the salaries prevailing in other educational institutions in the area or commercial operations of like nature.
- b. The Foundation may, at its discretion:
  - i. Provide retirement benefits, permanent status benefits, or both, to temporary and executive employees of the Foundation.
  - ii. Provide employees with retirement benefits other than by the public Employees' Retirement System.
- c. Pursuant to this agreement, members of the Foundation's Board of Directors are exempt from the required provision of retirement benefits for a period of three years from the date the Foundation is established.

**13.4.** Expend and Appropriate Funds in Accordance with Education Code section 72675. Specifically, the Foundation's Board shall:

- a. Approve all expenditures and fund appropriations consistent with its mission and the terms of this Agreement.
- b. Obtain District approval for the appropriation of funds for use outside of the Foundation's normal business operations.
- c. Use the District's standard accounting and reporting system for the businesslike management of the Foundation's operations.
- d. Comply, at minimum, with District financial standards to ensure fiscal viability. Such standards shall include proper provision for professional management, adequate working capital, and adequate reserve funds for current operations, capital replacements, contingencies and adequate provisions for new business requirements. The Foundation may, however, implement standards of greater fiscal prudence than the District's standard, provided however, that such standards are reasonable and do not prevent the Foundation from achieving its mission or otherwise complying with this Agreement and the laws applicable to California public benefits corporations.
- e. Report funds derived from indirect cost payments to the District's governing board.

**13.5.** Keep Records in Accordance with Prudent Recordkeeping Principles, and Education Code section 72690 et. seq. Specifically, the Foundation shall:

- a. Administer and report its financial activities in accordance with prudent business practices and generally accepted accounting principles.
- b. Provide the District with financial statements and schedules of investments and savings on a quarterly and annual basis on dates the Foundation holds meetings of its Board of Directors, or whenever otherwise requested by the District, or as provided for in this Agreement.
- c. Disclose records to the extent required by the Internal Revenue Code, California Corporations Code applicable to public benefit corporations, and Education Code section 72690, et. seq.

The Foundation agrees to maintain its organization and operate in accordance with sections 170(b)(1)(A), 501(c)(3), and 509(a)(1) of the Internal Revenue Code, sections 5110-6815 of the California Corporations Code, and California Government Code section 12580 and the Foundation shall maintain compliance with all requirements thereof at all times.

**ARTICLE XIV  
SIGNS, FIXTURES, AND EQUIPMENT**

During the term of this Agreement, the Foundation shall have the right to place and attach fixtures, signs, and equipment in or upon facilities as authorized by the Chancellor or the Chancellor's designee in writing as to number, size, and locations. Fixtures, signs, or equipment so erected, placed, or attached by the Foundation shall be and remain the property of the Foundation and be removed therefrom by the Foundation at any time by request of the Chancellor or the Chancellor's designee and upon termination of this Agreement.

**ARTICLE XV  
RIGHT OF ENTRY**

It is understood and agreed that at any time, with or without notice, the District and its agents shall have the right to enter the Foundation facilities or any part thereof for the purposes of examination or supervision.

**ARTICLE XVI  
COMPLIANCE REVIEW**

All Foundation procedures and practices shall be reviewed to determine compliance with Education Code Sections 72670 et seq., the policies, rules and regulations of the Board of Governors including those set forth in 5 CCR 5952 et seq., and District Board Policy 3600. The Chancellor or the Chancellor's designee shall designate the individual to conduct this review, which shall be conducted at the end of the first complete fiscal year after execution of the Agreement and at least once every three (3) years thereafter.

When the Chancellor or the Chancellor's designee determines, after inspection and review, that certain Foundation procedures and practices are not in compliance with policies, rules and regulations of the Board of Governors and the District, a recommendation concerning the items of noncompliance shall be communicated in writing to Chancellor and to the Board of Directors of the Foundation. The Board of Directors shall reply in writing within two months, either describing the actions which will be taken, including a timetable, to bring said procedures and practices into compliance; or describing the reasons why the Board considers the procedures already to be in compliance.

If the Chancellor or the Chancellor's designee considers the proposed corrective actions to be acceptable, the Foundation shall be so informed. A second compliance review shall be held at the end of the time agreed to and the results communicated in writing to the Chancellor and to the Board of Directors.

If the Foundation fails to provide an acceptable proposal for corrective actions or fails to implement successful corrective actions within the agreed upon time, the Chancellor or the Chancellor's designee shall inform the Board of Directors of such further action as he/she considers appropriate, which may include a recommendation to the Board of Trustees for termination of this Agreement.

**ARTICLE XVII  
THIRD PARTY AGREEMENTS BY THE FOUNDATION**

The Foundation shall not enter into any contract that would obligate designated District or College monies, facilities, equipment, or personnel without prior District approval. Any such contracts must contain sixty (60)-day or ninety (90)-day cancellation provisions and no cancellation penalties.

**ARTICLE XVIII  
INSURANCE, INDEMNIFICATION, AND RESTORATION**

The District shall include the Foundation as a named insured under the District's or College's insurance policies for all of its regular functions. The Foundation shall reimburse the

District for such coverage in accordance with Article VIII of this Agreement. When special events are sponsored by the Foundation, the District may require the Foundation to obtain separate insurance coverage for the Foundation, the District, and the College protecting against liability arising from such special events. If any insurance policy is secured by the Foundation, the District and College shall be named as additional insured. A copy of each policy or endorsement or insurance certificates setting forth the coverage and limits shall be provided to the District within thirty (30) days from the receipt of the document.

The Foundation agrees to indemnify, defend, and hold harmless the District and College, its officers, agents, and employees from any and all loss, damage, or liability that may be suffered or incurred by the District or College, its officers, agents, and employees caused by, arising out of, or in any way connected with the use of the described facilities by the Foundation or in connection with this Agreement.

Officers and staff members of the Foundation may be required to be bonded as appropriate in amounts to be determined by the Foundation's governing board. The Foundation may also obtain general liability and directors' and officers' liability insurance in amounts determined by the governing board to be reasonable and appropriate.

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

**ARTICLE XIX  
REAL PROPERTY**

The Foundation shall not enter into any transaction concerning real property without the prior approval of the District Chancellor or the Chancellor's designee, following the Chancellor's notification to the District Board of Trustees.

**ARTICLE XX  
NON-ASSIGNABILITY**

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

**ARTICLE XXI  
TERMS OF AGREEMENT**

This Agreement shall begin on the Effective Date. It may be terminated by either party giving ninety (90) days written notice of the same.

The Foundation must remain in good standing with the District as per Article XIII. Otherwise, this Agreement will immediately terminate and the Foundation will terminate any contracts with third parties.

**ARTICLE XXII  
JURISDICTION**

This Agreement shall be governed and construed in accordance with the laws of the State of California applicable to contracts made and fully performed therein, and the state and federal courts located in Alameda County, California and the Northern District of California shall have exclusive jurisdiction of all suits and proceedings arising out of or in connection with this Agreement. Both parties hereby submit to the jurisdiction of said courts for purposes of any such suit or proceeding, and waive any claim that any such forum is an inconvenient forum.

**ARTICLE XXIII  
NOTICES**

All notices herein 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 Foundation's Board of Directors or the District Chancellor, as follows.

Notice to the Foundation shall be addressed as follows:

Secretary, Board of Directors  
Las Positas College Viticulture and Enology Foundation  
3000 Campus Hill Drive  
Livermore, CA 94551

Notice to the District shall be addressed as follows:

Chancellor  
Chabot-Las Positas Community College District  
7600 Dublin Blvd., 3<sup>rd</sup> Floor  
Dublin, CA 94568

With a copy to:

President  
Las Positas College  
300 Campus Hill Drive  
Livermore, CA 94551

**IN WITNESS WHEREOF**, this Agreement has been executed in duplicate by the parties hereto as of the date first above written.

By: \_\_\_\_\_

Ronald Gerhard  
Vice Chancellor, Business Services  
Chabot-Las Positas Community College  
District

By: \_\_\_\_\_

David Everett  
President  
Las Positas College Viticulture & Enology  
Foundation

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

The following Las Positas College facilities may be used by the **LAS POSITAS COLLEGE VITICULTURE & ENOLOGY FOUNDATION** for permitted grape processing, wine making, wine analysis, wine storage and sales.

1. Room 806 located in building 800
2. The combined Viticulture / Horticulture building 800 outdoor fenced yard, including any outdoor space and/or any storage containers placed in the enclosed space
3. Room 1815 Enology Prep Lab
4. The LPC warehouse facility (building 3000) for case storage
5. Any other current or future facilities as deemed appropriate by the College