

Bylaws of
The Foundation for Chabot-Las Positas Community College District
A California Nonprofit Public Benefit Corporation

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DEFINED TERMS USED IN THIS DOCUMENT

- “annual meeting” – Section 7.5
- “Articles of Incorporation” – Section 7.2
- “Attorney General” – Section 7.4.4
- “Board” – Section 7.2
- “California Nonprofit Corporation Law” – Section 3.1
- “Chairperson” – Section 9.6.1
- “Code” –Section 4.2
- “Committees” – Section 8.1
- “Corporation” – Section 1.1
- “Directors” – Section 7.1.1
- “District” – Section 3.2
- “e-mail” – Section 7.7.1
- “Officers” – Section 9.1
- “President” – Section 9.6.2
- “Secretary” – Section 9.6.4
- “Treasurer” – Section 9.6.5
- “Vice President” – Section 9.6.3

ARTICLE 1 NAME

Section 1.1 Corporate Name

The name of this corporation is **The Foundation for Chabot-Las Positas Community College District** (the “Corporation”).

ARTICLE 2 OFFICES

Section 2.1 Principal Office

The principal office for the transaction of the business of the Corporation may be established at any place or places within or without the State of California by resolution of the Board.

Section 2.2 Other Offices

The Board may at any time establish branch or subordinate offices at any place or places where the Corporation is qualified to transact business.

ARTICLE 3 PURPOSES

Section 3.1 General Purpose

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

Section 3.2 Specific Purpose

The specific purpose of this the Corporation shall be to advance the interests and promote the welfare of Chabot-Las Positas Community College District (“District”), and to carry on other educational and charitable activities associated with this purpose as allowed by law.

Section 3.3. Exempt Purpose

This Corporation is organized and operated exclusively for charitable and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”).

ARTICLE 4 LIMITATIONS

Section 4.1 Political Activities

The Corporation has been formed under California Nonprofit Corporation Law for the public and charitable purposes described in Article 3, and it shall be nonprofit and nonpartisan. No substantial part of the activities of the Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in any political campaign (including the publishing or distribution of statements) on behalf of, or in opposition to, any candidate for public office.

Section 4.2 Prohibited Activities

The Corporation shall not, except in any insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes described in Article 3. The Corporation may not carry on any activity for the profit of its Officers, Directors or other private persons or distribute any gains, profits or dividends to its Officers, Directors or other persons as such. Furthermore, nothing in Article 3 shall be construed as allowing the Corporation to engage in any activity not permitted to be carried on (i) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”) or (ii) by a corporation, contributions to which are deductible under section 170(c)(2) of the Code.

ARTICLE 5 DEDICATION OF ASSETS

Section 5.1 Property Dedicated to Nonprofit Purposes

The property of the Corporation is irrevocably dedicated to educational and charitable purposes meeting the requirements of Revenue and Taxation Code section 214, and no part of the net income or assets of this Corporation shall ever inure to the benefit of any director, officer or member, if any, of this Corporation, or to any other private person, except that the Corporation is authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article 3 hereof.

Section 5.2 Distribution of Assets Upon Dissolution

Upon the dissolution and winding up of this Corporation and after paying or adequately providing for the debts and obligations of this Corporation, the remaining assets shall be distributed only to the Chabot-Las Positas Community College District for the sole benefit of the District.

ARTICLE 6 MEMBERSHIPS

Section 6.1 Members

The Corporation shall have no members within the meaning of section 5056 of the California Nonprofit Corporation Law.

Section 6.2 Non-Voting Members

The Board may adopt policies and procedures for the admission of associate members or other designated members who shall have no voting rights in the Corporation. Such associate or other members are not “members” of the Corporation as defined in section 5056 of the California Nonprofit Corporation Law.

ARTICLE 7 DIRECTORS

Section 7.1 Number and Qualifications

7.1.1 Number

The authorized number of directors of the Corporation (“Directors”) shall be not less than 10 or more than 16; the exact authorized number to be fixed, within these limits, by resolution of the Board.

7.1.2 Qualifications

Directors must consist of individuals from one or more of the following categories: District administration, District staff; members of the communities the District services (Castro Valley, Dublin, Hayward, Livermore, Pleasanton, San Leandro, San Lorenzo, Sunol, and Union City); District students.

At least two board members shall be elected from the community-at-large, by the process set forth in sectionSection 7.3below.

7.1.3. Ex Officio Directors

The minimum of 10 Directors of the Corporation shall consist of the following individuals, who shall serve on the Corporation’s Board by virtue of the position or office they hold:

- 1) The Chair of the Board of the Las Positas College Foundation or the chair’s appointee, and an officer of the Las Positas College Foundation Board appointed by that board’s chair.

- 2) The President of The Friends of Chabot College Board and an officer of The Friends of Chabot College Board appointed by that board's president.
- 3) The Chancellor of the Chabot-Las Positas Community College District, or the Chancellor's appointee.
- 4) The Vice Chancellor for Business Services of Chabot College, or the Vice Chancellor's appointee.
- 5) The President of Chabot College, or the President's appointee.
- 6) The Vice Chancellor for Business Services of Las Positas College, or the Vice Chancellor's appointee.
- 7) The President of Las Positas College, or the President's appointee.

Section 7.2 Corporate Powers Exercised by Board

Subject to the provisions of the Articles of Incorporation of the Corporation (the "Articles of Incorporation"), these Bylaws, applicable law, District Board Policies, District Administrative Procedures, and the terms of any Master Agreement between the Corporation and the District, the business and affairs of the Corporation shall be managed, and all corporate powers shall be exercised, by or under the direction of the Board of Directors (the "Board"). 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. Without limiting any such power or authority, the Corporation's Board of Directors shall have the following additional powers:

- a. To determine this corporation's goals and objectives and formulate strategic plans designed to meet them;
- b. To establish policies for administering the affairs of this corporation;
- c. To adopt and control the operation, budget, financial and fundraising plan(s) of this corporation and assure the conduct of the financial affairs on a responsible basis in accordance with established policies and best practices;
- d. To control, manage and maintain the property of this corporation;
- e. To sell any property, real, personal or mixed, owned by this corporation at any time upon such terms as deemed advisable, at public or private sale, for cash or upon credit;
- f. To retain all or any part of any securities, or property acquired by this corporation in whatever manner, and to invest and to reinvest any funds held by the corporation, according to the agreement of the Board of Directors.

Section 7.3 Terms; Election of Directors

The terms of Directors shall be as follows:

- a. Elected Directors – Elected Directors shall be elected at each annual meeting of the Board for 2-year terms. Each elected Director, including a Director elected to fill a vacancy, shall hold office until the expiration of the term for which the Director was elected and until the election and qualification of a successor, or until that Director's earlier resignation or removal in accordance with these Bylaws and California Nonprofit Corporation Law. By resolution, the Board may arrange for terms to be staggered.
- b. Ex-Officio Directors – Ex Officio Directors shall serve on the Board by virtue of their holding the position or appointment identified in section 7.1.3 above.

- c. Appointees of Ex Officio Directors – Appointees of Ex Officio Directors shall serve at the discretion of the appointing Ex Officio Director.

Section 7.4 Vacancies

7.4.1 Events Causing Vacancy

A vacancy or vacancies on the Board shall be deemed to exist on the occurrence of the following: (i) the death, resignation, or removal of any Director; (ii) whenever the number of authorized Directors is increased; or (iii) the failure of the Board, at any meeting at which any Director or Directors are to be elected, to elect the full authorized number of Directors.

7.4.2 Removal

The Board may by resolution declare vacant the office of a Director who has been declared of unsound mind by an order of court, or convicted of a felony, or found by final order or judgment of any court to have breached a duty under California Nonprofit Corporation Law.

The Board may by resolution declare vacant the office of a director who fails to attend 3 consecutive Board meetings during any calendar year.

The Board may by a majority vote of the Directors who meet all of the required qualifications to be a Director set forth in Section 7.1.2, declare vacant the office of any Director who fails or ceases to meet any required qualification that was in effect at the beginning of that Director's current term of office.

With the exception of Ex-Officio Directors and their appointees, Directors may be removed without cause by a majority of Directors then in office.

7.4.3 No Removal on Reduction of Number of Directors

No reduction of the authorized number of Directors shall have the effect of removing any Director before that Director's term of office expires unless the reduction also provides for the removal of that specified Director in accordance with these Bylaws and California Nonprofit Corporation Law.

7.4.4 Resignations

Except as provided in this Section 7.4.4, any Director may resign by giving written notice to the Chairperson, the President, the Secretary, or the Board. Such a written resignation will be effective on the later of (i) the date it is delivered or (ii) the time specified in the written notice that the resignation is to become effective. No Director may resign if the Corporation would then be left without a duly elected Director or Directors in charge of its affairs, except upon notice to the California Attorney General (the "Attorney General").

7.4.5 Election to Fill Vacancies

If there is a vacancy on the Board created by the resignation or removal of an elected Director, the Board may fill such vacancy by electing an additional director as soon as practicable after the vacancy occurs. If the number of Directors then in office is less than a quorum, additional directors may be elected to fill such vacancies by (i) the unanimous written consent of the Directors currently holding office, (ii) the affirmative vote of a majority of the Directors in office at a meeting held according to notice or waivers complying with section 5211 of the California Nonprofit Corporation Law, or (iii) a sole remaining Director.

Section 7.5 Fees and Compensation of Directors

The Corporation shall not pay any compensation to Directors for services rendered to the Corporation as Directors, except that Directors may be reimbursed for expenses incurred in the performance of their duties to the Corporation, in reasonable amounts as approved by the Board.

ARTICLE 8 MEETINGS

Section 8.1 Meetings

8.1.1 Public Meetings

Meetings of the Board shall be conducted in accordance with the Ralph M. Brown Act, as set forth in Government Code section 54950, et. seq.

8.1.2 Regular Meetings (Annual and Quarterly)

Each year, the Board shall hold at least one public business meeting each quarter, at a time and place fixed by the Board. The election of Directors, appointment of Officers, review and approval of the corporate budget shall occur during the fourth quarter's business meeting each fiscal year (between April 1st and June 30th). This meeting is sometimes referred to in these Bylaws as the "annual meeting." The transaction of business may also occur during the annual meeting as well as other regular meetings held at such time and place as the Board may fix from time to time

8.1.3 Special Meetings

Special meetings of the Board for any purpose may be called at any time by the Chairperson, or the President, or the Vice President (if any), or the Secretary, or any two Directors.

8.1.4 Emergency Meetings

In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, the Board may call an Emergency Meeting. An emergency situation for which the Board may call an Emergency Meeting, include the following:

- a) An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the Board; or
- b) A dire emergency, which shall be defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring the Board to provide one-hour notice before holding an emergency meeting may endanger the public health, safety, or both, as determined by a majority of the members of the Board.

8.1.5 Emergency Actions

In anticipation of or during an emergency meeting, the Board may take either or both of the following actions necessary to conduct the Corporation's ordinary business operations and affairs:

- (a) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent resulting from the emergency;
- (b) Relocate the principal office or authorize the officers to do so.

During an emergency meeting, the Board may not take any action that is not in the Corporation's ordinary course of business. All provisions of the regular bylaws consistent with these emergency bylaws shall remain effective during the emergency.

8.1.6 Director's Notice of Meetings

8.1.6.1 Manner of Giving

In addition to the notice required by the Brown Act, notice of the time and place of all regular and special meetings shall be given to each Director by one of the following methods:

- (a) Through the setting of the meeting by Resolution in advance, as provided for in section X;
- (b)
- (c) Personal delivery of oral or written notice;
- (d) First-class mail, postage paid;
- (e) Telephone, including a voice messaging system or other system or technology designed to record and communicate messages; or
- (f) Facsimile, electronic mail (“e-mail”) or other means of electronic transmission if the recipient has consented to accept notices in this manner.

All such notices shall be given or sent to the Director’s address, phone number, facsimile number or e-mail address as shown on the records of the Corporation. Any oral notice given personally or by telephone may be communicated directly to the Director or to a person who would reasonably be expected to promptly communicate such notice to the Director. Notice of regular meetings may be given in the form of a calendar or schedule that sets forth the date, time and place of more than one regular meeting.

8.1.6.2 Timing

Notices sent by first-class mail shall be deposited into a United States mail box at least four days before the time set for the meeting. Notices given by personal delivery, telephone, voice messaging system or other system or technology designed to record and communicate messages, facsimile, e-mail or other electronic transmission shall be delivered at least 72 hours before the time set for the meeting.

8.1.6.3 Contents

The notice shall state the time and place for the meeting, .

Section 8.2 Place of Board Meetings

Regular and special meetings of the Board may be held at any place within the boundaries of the District, unless otherwise permitted by law. If the place of a regular or special meeting is not designated fixed by a resolution of the Board, it shall be held at the principal office of the Corporation.

8.2.1 Meetings by Telephone or Similar Communication Equipment

Any meeting may be held by conference telephone or other communications equipment permitted by California Nonprofit Corporation Law and the Ralph M. Brown Act, as long as all Directors participating in the meeting can communicate with one another and all other requirements of California Nonprofit Corporation Law and the Ralph M. Brown Act are satisfied. All such Directors shall be deemed to be present in person at such meeting.

Section 8.3 Quorum and Action of the Board

8.3.1 Quorum

A majority of Directors currently holding office (but no fewer than two Directors or one-fifth of the authorized number in Section 7.1.1, whichever is greater) shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 8.4.

8.3.2 Minimum Vote Requirements for Valid Board Action

Every act taken or decision made by a vote of the majority of the Directors present at a meeting duly held at which a quorum is present is the act of the Board, unless a greater number is expressly required by California Nonprofit Corporation Law, the Articles of Incorporation, these Bylaws, or the Brown Act. Voting may be completed in person at a meeting or online at a virtual meeting. All votes taken during a teleconferenced meeting shall be by rollcall.

8.3.3 When a Greater Vote Is Required for Valid Board Action

The following actions shall require a vote by a majority of all Directors currently holding office in order to be effective:

- (a) Approval of contracts or transactions in which a Director has a direct or indirect material financial interest as described in Section 10.1 (provided that the vote of any interested Director(s) is not counted);
- (b) Creation of, and appointment to, Committees (but not advisory committees) as described in Article 9; and
- (c) Removal of a Director without cause as described in Article 7.

Section 8.4 Adjournment

A majority of the Directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place. For the purposes of these Bylaws, the subsequently scheduled meeting shall be referred to as a “continued” or “continuation meeting.”

Section 8.5 Notice of Adjournment

Notice of the time and place of holding a continuation meeting shall be conspicuously posted on or near the door of the place where the adjourned meeting was held, within 24 hours after the meeting adjourned.. Notice of the time and place of the continued meeting shall be personally delivered to the Directors who were not present at the time of the adjournment. For the purpose of this Section 8.5, personal delivery to a Director may be in the form of a verbal or written communication, including, but not limited to, a phone call, voice message, or email communication.

Section 8.6 Conduct of Meetings

Meetings of the Board shall be presided over by the Chairperson, or, if there is no Chairperson or the Chairperson is absent, the President or, if the President and Chairperson are both absent, by the Vice President (if any) or, in the absence of each of these persons, by a chairperson of the meeting, chosen by a majority of the Directors present at the meeting. The Secretary shall act as secretary of all meetings of the Board, provided that, if the Secretary is absent, the presiding officer shall appoint another person to act as secretary of the meeting. Meetings shall be governed by rules of procedure as may be determined by the Board from time to time, insofar as such rules are not inconsistent with or in conflict with these Bylaws, with the Articles, or with any provisions of law applicable to the Corporation.

The Board shall have the benefit of the advice and counsel of at least one attorney admitted to practice law in this state and at least one licensed certified public accountant. Neither the attorney at law nor the certified public accountant need be members of the board of directors. Each shall have experience appropriate to the responsibility and shall have no financial interest in any contract or other transaction entered into by the Board.

Section 8.7 Action Without Meeting Prohibited

Any action required or permitted to be taken by the Board must be taken by an actual vote by a majority of the Directors when sitting as a Board, upon a motion, proposal, resolution, or order.

ARTICLE 9 COMMITTEES

Section 9.1 Committees of Directors

The Board may, by resolution adopted by a majority of the Directors currently holding office, create one or more Board Committees or Task Forces (“Committees”), including an executive committee, each consisting of two or more Directors, to serve at the discretion of the Board. Such Committees may consist only of Directors. Any Committee, to the extent provided in the resolution of the Board, may be given the authority of the Board, except that no Committee may:

- (a) approve any action for which the California Nonprofit Public Benefit Corporation Law also requires approval of a majority of Board;
- (b) fill vacancies on the Board or in any Committee which has the authority of the Board;
- (c) assign compensation to Directors for serving on the Board or on any Committee;
- (d) amend or repeal Bylaws or adopt new Bylaws;
- (e) amend or repeal any resolution of the Board;
- (f) appoint any other Committees or the members of these Committees;
- (g) expend corporate funds to support a nominee for Director; or
- (h) approve any transaction (i) between the Corporation and one or more of its Directors or (ii) between the Corporation and any entity in which one or more of its Directors have a material financial interest unless the conditions of Section 10.1.2.2 are satisfied.

Section 9.2 Meetings and Action of Board Committees

Meetings and action of Committees shall be governed by, and held and taken in accordance with, the provisions of Article 8 concerning meetings of Directors, with such changes in the context of Article 8 as are necessary to substitute the Committee and its members for the Board and its members, except that the time for Committee meetings will be determined by resolution of the Board. Each Committee shall keep records of its meetings and shall file them with the corporate records. The Committee shall report to the Board from time to time as the Board may require. The Board may adopt rules for the governance of any Committee not inconsistent with the provisions by these Bylaws.

Section 9.3 Quorum Rules for Board Committees

A majority of the Committee members shall constitute a quorum for the transaction of Committee business, except to adjourn. A majority of the Committee members present, whether or not constituting a quorum, may adjourn any meeting to another time and place. Every act taken or decision made by a majority of the Committee members present at a meeting duly held at which a quorum is present shall be regarded as an act of the Committee, subject to the provisions of the Brown Act and the California Nonprofit Corporation Law relating to actions that require a majority vote of the entire Board.

Section 9.4 Revocation of Delegated Authority

The Board may, at any time, revoke or modify any or all of the authority that the Board has delegated to a Committee, increase or decrease (but not below two) the number of members of a Committee, and fill vacancies in a Committee from the members of the Board.

Section 9.5 Audit Committee

The Board shall appoint an Audit Committee. The Audit Committee shall not include paid or unpaid staff or employees of the Corporation or District. If the Corporation establishes or

maintains a finance committee, members of the finance committee shall constitute less than 50% of the membership of the Audit Committee and the chairperson of the Audit Committee shall not be a member of the finance committee. Subject to the supervision of the Board, the Audit Committee shall:

- (a) Make recommendations to the Board on the hiring and firing of a CPA;
- (b) Confer with the CPA to satisfy Audit Committee members that the financial affairs of the Corporation are in order;
- (c) Approve non-audit services by the CPA and ensure such services conform to standards in the Yellow Book issued by the United States Comptroller General; and
- (d) If requested by the Board, negotiate the CPA's compensation on behalf of the Board.

Section 9.6 Annual Audit

9.6.1 Fiscal Year

The fiscal year of this corporation shall begin each July 1, and end on the succeeding June 30.

9.6.2 Method of Preparing

Annually each fiscal year, the Board shall retain an independent certified public accountant ("CPA") to prepare an audited financial statement using generally accepted accounting principles in conformity with generally accepted auditing standards. The CPA shall perform the Corporation's audit in accordance with procedures prescribed by the Chancellor of California's Community Colleges. Such audits may be conducted as part of a fiscal audit of the District itself.

9.6.3 Submission to District and State Chancellor's Office

Within 30 days of receipt, the Board shall submit copies of the annual audit report to the District Board of Trustees and to the California Community Colleges Chancellor's Office. Thereafter, the audit shall be a public record, except as otherwise provided by law.

9.6.4 Publication of Annual Audit

The Board shall annually publish the Corporation's audit statement, and shall disseminate the statement as widely as feasible and make it available to any person on request. The Corporation may charge a reasonable fee to cover the costs of providing a copy. The Corporation shall comply with this requirement by distributing the audited financial statement of its financial condition at a regularly scheduled meeting of the District's governing board.

The audited financial statements shall also be available for inspection by the Attorney General and shall be made available to members of the public in the same manner prescribed by IRS for Form 990 and no later than nine months after the close of the fiscal year to which the statements relate.

- (a)

Section 9.7 Advisory Committees

The Board may create one or more advisory committees to serve at the pleasure of the Board. Appointments to such advisory committees need not, but may, be Directors. The Board shall appoint and discharge advisory committee members. All actions and recommendations of an advisory committee shall require ratification by the Board before being given effect.

ARTICLE 10 OFFICERS

- Section 10.1 Officers
The officers of the Corporation (“Officers”) shall be either a President or a Chairperson, or both, a Secretary, and a Treasurer or chief financial officer, or both. These persons shall be, selected from among the Directors. The Board shall have the power to designate additional Officers, including a Vice President, with such duties, powers, titles and privileges as the Board may fix, including such Officers as may be appointed in accordance with Section 10.6.6. Any number of offices may be held by the same person, except that the Secretary, the Treasurer and the chief financial officer (if any) may not serve concurrently as either the President or the Chairperson.
- Section 10.2 Election of Officers
The Officers, except those appointed in accordance with Section 10.6.6, shall be elected by the Board at the annual meeting of the Corporation for a term of one year, and each shall serve at the discretion of the Board until his or her successor shall be elected, or his or her earlier resignation or removal. Officers may be elected for 2 consecutive terms.
- Section 10.3 Removal of Officers
Subject to the rights, if any, of an Officer under any contract of employment, any Officer may be removed from their position, with or without cause, (i) by the Board, at any regular or special meeting of the Board, or at the annual meeting of the Corporation, or (ii) by an Officer on whom such power of removal may be conferred by the Board.
- Section 10.4 Resignation of Officers
Any Officer may resign their position at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any of the Corporation under any contract to which the Officer is a party.
- Section 10.5 Vacancies in Offices
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 that office, provided that such vacancies shall be filled as they occur and not on an annual basis. In the event of a vacancy in any office other than the President or one appointed in accordance with Section 10.6.6, such vacancy shall be filled temporarily by appointment by the President, or if none, by the Chairperson, and the appointee shall remain in office for 60 days, or until the next regular meeting of the Board, whichever comes first. Thereafter, the position can be filled only by action of the Board.
- Section 10.6 Responsibilities of Officers
- 10.6.1 Chairperson of the Board
The chairperson of the Board (the “Chairperson”), if any, shall be a Director and shall preside at meetings of the Board and exercise and perform such other powers and duties as may from time to time be assigned to him by the Board or prescribed by these Bylaws. If the Board designates both a Chairperson and a President, the Board shall, by resolution, establish the specific duties carried by each position.
- 10.6.2 President
The president of the Corporation (the “President”) shall, if there is no Chairperson, or in the Chairperson’s absence, preside at meetings of the Board and exercise and perform such other powers and duties as may from time to time be assigned to him by the Board or prescribed by these Bylaws. If no other person is designated as the chief executive, the President shall, in addition, be the chief executive and shall have the powers and duties prescribed in Section 9.7.

- 10.6.3 Vice President
The vice president of the Corporation (the “Vice President”) shall, in the absence or disability of the President, perform all the duties of the President and, when so acting, have all the powers of and be subject to all the restrictions upon, the President. The Vice President shall have such other powers and perform such other duties as may be prescribed by the Board.
- 10.6.4 Secretary
The secretary of the Corporation (the “Secretary”) shall attend to the following:
- 10.6.4.1 Bylaws
The Secretary shall certify and keep or cause to be kept at the principal office of the Corporation the original or a copy of these Bylaws as amended to date.
- 10.6.4.2 Minute Book
The Secretary shall keep or cause to be kept a minute book as described in Section 11.1.
- 10.6.4.3 Notices
The Secretary shall give, or cause to be given, notice of all meetings of the Board in accordance with these Bylaws.
- 10.6.4.4 Corporate Records
Upon request, the Secretary shall exhibit or cause to be exhibited at all reasonable times to any Director, or to his or her agent or attorney, these Bylaws and the minute book.
- 10.6.4.5 Corporate Seal and Other Duties
The Secretary shall keep or cause to be kept the seal of the Corporation, if any, in safe custody, and shall have such other powers and perform such other duties incident to the office of Secretary as may be prescribed by the Board or these Bylaws.
- 10.6.5 Treasurer
The treasurer of the Corporation (the “Treasurer”) shall attend to the following:
- 10.6.5.1 Books of Account
The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and other matters customarily included in financial statements. The books of account shall be open to inspection by any Director at all reasonable times.
- 10.6.5.2 Financial Reports
The Treasurer shall prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports.
- 10.6.5.3 Deposit and Disbursement of Money and Valuables
The Treasurer shall deposit, or cause to be deposited, all money and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board; shall disburse, or cause to be disbursed, the funds of the Corporation as may be ordered by the Board; shall render, or cause to be rendered to the President and Directors, whenever they request it, an account of all of his or her transactions as Treasurer and of the financial condition of the Corporation; and shall have other powers and perform such other duties incident to the office of Treasurer as may be prescribed by the Board or these Bylaws.

10.6.5.4 Bond

If required by the Board, the Treasurer shall give the Corporation a bond in the amount and with the surety or sureties specified by the Board for faithful performance of the duties of his or her office and for restoration to the Corporation of all its books, papers, vouchers, money, and other property of every kind in his or her possession or under his or her control on his or her death, resignation, retirement, or removal from office.

10.6.6 Additional Officers

The Board may empower the Chairperson or President to appoint or remove such other Officers as the business of the Corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board from time to time may determine.

ARTICLE 11 TRANSACTIONS BETWEEN CORPORATION AND DIRECTORS OR OFFICERS

Section 11.1 Transactions with Directors and Officers

11.1.1 Interested Party Transactions

Except as described in Section 11.1.2, the Corporation shall not be a party to any contract or transaction:

- (a) in which one or more of its Directors or Officers has a financial interest, or
- (b) with any corporation, firm, association, or other entity in which one or more Directors or Officers has a financial interest.

11.1.2 Requirements to Authorize Interested Party Transactions

The Corporation shall not be a party to any transaction described in 11.1.1 unless:

- (a) the Corporation enters into the transaction for its own benefit;
 - (b) the transaction is fair and reasonable to the Corporation at the time the transaction is authorized or approved;
 - (c) prior to consummating the transaction or any part thereof, the fact of the financial interest is disclosed or known to the Board and noted in the minutes, and thereafter the Board authorizes or approves the transaction in good faith, by a vote of a majority of Directors then in office (without counting the vote of the interested Directors), and with knowledge of the material facts concerning the transaction and the interested Director's or Officer's financial interest in the transaction;
 - (d) prior to authorizing or approving the transaction, the Board considers and in good faith determines after reasonable investigation that the Corporation could not obtain a more advantageous arrangement with reasonable effort under the circumstances; and
 - (e) the minutes of the Board meeting at which such action was taken reflect that the Board considered and made the findings described in paragraphs (a) through (d) of this Section 11.1.2.
- (a) .

11.1.3 Financial Interest

A Director or Officer shall not be deemed to have a "financial interest" in a transaction:

- (a) that fixes the compensation of a Director as a Director or Officer;
- (b) if the contract or transaction is part of a public or charitable program of the Corporation and it (1) is approved or authorized by the Corporation in good faith and without unjustified favoritism, and (2) results in a benefit to one or more Directors or their families only because they are in the class of persons intended to be benefited by the program; or
- (c) where the interested Director has no actual knowledge of the transaction and it does not exceed the lesser of one percent of the gross receipts of the corporation for the preceding year or \$100,000.

Section 11.2 Void Contracts and Transactions

Under no circumstances shall the Corporation enter into a contract or transaction with a member of the Board when:

- (a) the contract or transaction is between the Corporation and a member of the Board of the Corporation;
- (b) the contract or transaction is between the Corporation and a partnership or unincorporated association of which any member of the Board of the Corporation is a partner or in which he or she is the owner or holder, directly or indirectly, of a proprietorship interest;
- (c) the contract or transaction is between the Corporation and a corporation in which any member of the Board of the Corporation is the owner or holder, directly or indirectly, of 5 percent or more of the outstanding common stock; or
- (d) a member of the Board of the Corporation is interested in a contract or transaction within the meaning of section 11.1.1, and without first disclosing such interest to the Board at a public meeting of the Board, influences or attempts to influence another member or members of the Board to enter into the contract or transaction.

The exceptions set forth in section 11.1.2 do not apply to this section 11.2. Any contracts or transactions entered into in violation of this section are void.

Section 11.3 Loans to Directors and Officers

The Corporation shall not make any loan of money or property to or guarantee the obligation of any Director or Officer; except that the Corporation may advance money to a Director or Officer for expenses reasonably anticipated to be incurred in the performance of duties of such Director or Officer, if in the absence of such advance, such Director or Officer would be entitled to be reimbursed for such expenses by the Corporation.

Section 11.4 Interlocking Directorates

No contract or other transaction between the Corporation and any corporation, firm or association of which one or more Directors are directors is either void or voidable because such Director(s) are present at the Board or Committee meeting that authorizes, approves or ratifies the contract or transaction, if (i) the material facts as to the transaction and as to such Director's other directorship are fully disclosed or known to the Board or Committee, and the Board or Committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the common Director(s) (subject to the quorum provisions of Article 8); or if (ii) the contract or transaction is just and reasonable as to the Corporation at the time it is authorized, approved or ratified.

Section 11.5 Duty of Loyalty; Construction with Article 12

Nothing in this Article 11 shall be construed to derogate in any way from the absolute duty of loyalty that every Director and Officer owes to the Corporation. Furthermore, nothing in this

Article 11 shall be construed to override or amend the provisions of Article 12. All conflicts between the two articles shall be resolved in favor of Article 12.

ARTICLE 12 INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS

Section 12.1 Definitions

For purpose of this Article 12,

12.1.1 “Agent”

means any person who is or was a Director, Officer, employee, or other agent of the Corporation, or is or was serving at the request of the Corporation as a Director, Officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or was a Director, Officer, employee, or agent of a foreign or domestic corporation that was a predecessor corporation of the Corporation or of another enterprise at the request of the predecessor corporation;

12.1.2 “Proceeding”

means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative brought to procure a judgment or finding against a person by reason of the fact that he or she is, or was, an Agent of the Corporation; and

12.1.3 “Expenses”

includes, without limitation, all attorneys’ fees, costs, and any other expenses reasonably incurred in the defense of any claims or proceedings against an Agent by reason of his or her position or relationship as Agent and all attorneys’ fees, costs, and other expenses reasonably incurred in establishing a right to indemnification under this Article 12.

Section 12.2 Applicability of Indemnification Provisions

12.2.1 Successful Defense by Agent

To the extent that an Agent has been successful on the merits in the defense of any proceeding referred to in this Article 12, or in the defense of any claim, issue, or matter therein, the Agent shall be indemnified against expenses actually and reasonably incurred by the Agent in connection with the claim.

12.2.2 Settlement or Unsuccessful Defense by Agent

If an Agent either settles any proceeding referred to in this Article 12, or any claim, issue, or matter therein, or sustains a judgment rendered against him, then the provisions of Section 12.3 through Section 12.6 shall determine whether the Agent is entitled to indemnification.

Section 12.3 Actions Brought by Persons Other than the Corporation

This Section 12/3 applies to any proceeding other than an action “by or on behalf of the corporation” as defined in Section 12.4. Such proceedings that are not brought by or on behalf of the Corporation are referred to in this Section 12.3 as “Third Party proceedings.”

12.3.1 Scope of Indemnification in Third Party Proceedings

Subject to the required findings to be made pursuant to Section 12.3.2, the Corporation *may* indemnify any person who was or is a party, or is threatened to be made a party, to any Third Party proceeding, by reason of the fact that such person is or was an Agent, for all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with the proceeding.

12.3.2 Required Standard of Conduct for Indemnification in Third Party Proceedings

Any indemnification granted to an Agent in Section 12.3.1 above is conditioned on the following. The Board must determine, in the manner provided in Section 12.5, that the Agent seeking

reimbursement acted in good faith, in a manner he or she reasonably believed to be in the best interest of the Corporation, and, in the case of a criminal proceeding, he or she must have had no reasonable cause to believe that his or her conduct was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or on a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or in a manner he or she reasonably believed to be in the best interest of the Corporation or that he or she had reasonable cause to believe that his or her conduct was unlawful.

Section 12.4 Action Brought By or On Behalf Of the Corporation

This Section 12.4 applies to any proceeding brought (i) by or in the right of the Corporation, or (ii) by an Officer, Director or person granted relator status by the Attorney General, or by the Attorney General, on the ground that the defendant Director was or is engaging in self-dealing within the meaning of section 5233 of the California Nonprofit Corporation Law, or (iii) by the Attorney General or person granted relator status by the Attorney General for any breach of duty relating to assets held in charitable trust (any such proceeding is referred to in these Bylaws as a proceeding “by or on behalf of the Corporation”).

12.4.1 Scope of Indemnification in Proceeding By or On Behalf Of the Corporation

Subject to the required findings to be made pursuant to Section 12.4.2, and except as provided in Sections 12.4.3 and 12.4.4, the Corporation may indemnify any person who was or is a party, or is threatened to be made a party, to any proceeding by or on behalf of the Corporation, by reason of the fact that such person is or was an Agent, for all expenses actually and reasonably incurred in connection with the defense or settlement of such action.

12.4.2 Required Standard of Conduct for Indemnification in Proceeding By or On Behalf Of the Corporation

Any indemnification granted to an Agent in Section 12.4.1 is conditioned on the following. The Board must determine, in the manner provided in Section 12.5, that the Agent seeking reimbursement acted in good faith, in a manner he or she believed to be in the best interest of the Corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

12.4.3 Claims Settled Out of Court

If any Agent settles or otherwise disposes of a threatened or pending action brought by or on behalf of the Corporation, with or without court approval, the Agent shall receive no indemnification for amounts paid pursuant to the terms of the settlement or other disposition. Also, in cases settled or otherwise disposed of without court approval, the Agent shall receive no indemnification for expenses reasonably incurred in defending against the proceeding, unless the proceeding is settled with the approval of the Attorney General.

12.4.4 Claims and Suits Awarded Against Agent

If any Agent is adjudged to be liable to the Corporation in the performance of the Agent’s duty to the Corporation, the Agent shall receive no indemnification for amounts paid pursuant to the judgment, and any indemnification of such Agent under Section 11.4.1 for expenses actually and reasonably incurred in connection with the defense of that action shall be made only if both of the following conditions are met:

- (a) The determination of good faith conduct required by Section 12.4.2 must be made in the manner provided for in Section 12.5; and
- (b) Upon application, the court in which the action was brought must determine that, in view of all of the circumstances of the case, the Agent is fairly and reasonably entitled to indemnity for the expenses incurred. If the Agent is found to be so entitled, the court shall determine the appropriate amount of expenses to be reimbursed.

- Section 12.5 Determination of Agent’s Good Faith Conduct
The indemnification granted to an Agent in Section 12.3 and Section 12.4 is conditioned on the findings required by those Sections being made by:
- (a) the Board by a majority vote of a quorum consisting of Directors who are not parties to the proceeding; or
 - (b) the court in which the proceeding is or was pending. Such determination may be made on application brought by the Corporation or the Agent or the attorney or other person rendering a defense to the Agent, whether or not the application by the Agent, attorney, or other person is opposed by the Corporation.
- Section 12.6 Limitations
No indemnification or advance shall be made under this Article 12, except as provided in Section 12.2.1 or Section 12.5(b), in any circumstances when it appears:
- (a) that the indemnification or advance would be inconsistent with a provision of the Articles of Incorporation, as amended, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or
 - (b) that the indemnification would be inconsistent with any condition expressly imposed by a court in approving a settlement.
- Section 12.7 Advance of Expenses
Expenses incurred in defending any proceeding may be advanced by the Corporation before the final disposition of the proceeding on receipt of an undertaking by or on behalf of the Agent to repay the amount of the advance unless it is determined ultimately that the Agent is entitled to be indemnified as authorized in this Article 12.
- Section 12.8 Contractual Rights of Non-Directors and Non-Officers
Nothing contained in this Article 12 shall affect any right to indemnification to which persons other than Directors and Officers of the Corporation, or any of its subsidiaries, may be entitled by contract or otherwise.
- Section 12.9 Insurance
The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any Agent, as defined in this Article 12, against any liability asserted against or incurred by any Agent in such capacity or arising out of the Agent’s status as such, whether or not the Corporation would have the power to indemnify the Agent against the liability under the provisions of this Article 12.

ARTICLE 13 CORPORATE RECORDS, REPORTS AND SEAL

- Section 13.1 Minute Book
The Corporation shall keep a minute book in written form which shall contain a record of all actions by the Board or any committee including (i) the time, date, place, and agenda of each meeting; (ii) whether a meeting is regular or special and, if special, how called; (iii) the manner of giving notice of each meeting and a copy thereof; (iv) the names of those present at each meeting of the Board or any Committee thereof; (v) the minutes of all meetings; (vi) any written waivers of notice, consents to the holding of a meeting or approvals of the minutes thereof; (vii) all written

consents for action without a meeting; (viii) all protests concerning lack of notice; and (ix) formal dissents from Board actions.

Section 13.2 Books and Records of Account

The Corporation shall keep adequate and correct books and records of account. "Correct books and records" include, but is not necessarily limited to: accounts of properties and transactions, its assets, liabilities, receipts, disbursements, gains, and losses.

Section 13.3 Articles of Incorporation and Bylaws

The Corporation shall keep at its principal office, the original or a copy of the Articles of Incorporation and Bylaws as amended to date.

13.3.1 Maintenance and Inspection of Federal Tax Exemption Application and Annual Information Returns

The Corporation shall at all times keep at its principal office a copy of its federal tax exemption application and, for three years from their date of filing, its annual information returns. These documents shall be open to public inspection and copying to the extent required by law.

Section 13.4 Annual Report; Statement of Certain Transactions

The Board shall cause an annual report to be sent to each Director and to the District by September 15th each year containing the following information:

- (a) The assets and liabilities of the Corporation, including the trust funds, as of the end of the fiscal year.
- (b) The principal changes in assets and liabilities, including trust funds, during the fiscal year.
- (c) The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, for this fiscal year.
- (d) The expenses or disbursements of the Corporation for both general and restricted purposes during the fiscal year.
- (e) A comparison of the budgeted and actual expenditures for the fiscal year.
- (f) A statement of any transaction (i) to which the Corporation was a party, (ii) which involved more than \$50,000 or which was one of a number of such transactions with the same person involving, in the aggregate, more than \$50,000, and (iii) in which either of the following interested persons had a direct or indirect financial interest (a mere common directorship is not a financial interest):
 - (1) Any Director or Officer of the Corporation, its parent, or its subsidiary;
 - (2) Any holder of more than 10% of the voting power of the Corporation, its parent, or its subsidiary.

The statement shall include: (i) a brief description of the transaction; (ii) the names of interested persons involved; (iii) their relationship to the Corporation; (iv) the nature of their interest in the transaction, and; (v) when practicable, the amount of that interest, provided that, in the case of a partnership in which such person is a partner, only the interest of the partnership need be stated.

- (g) A brief description of the amounts and circumstances of any indemnifications, or advances aggregating more than \$10,000 paid during the fiscal year to any Officer or Director under Article 11.

- (h) The Corporation's audited financial statements required to be filed with the District and California Community College Chancellor's Office.
- (i) A description of the Corporation's major accomplishments from the fiscal year.
- (j) A description of improvements proposed for operation of the Corporation.

Section 13.5 Annual Budget and Programs

The Board shall prepare or cause to be prepared, a proposed annual budget and program plan for the forthcoming fiscal year, on or before March 30th of the current fiscal year. The Board shall submit the proposed budget and program plan to the District Chancellor no later than March 30th for District review. Subject to the Chancellor's authorization, the Board shall adopt a final budget and program plan for the forthcoming fiscal year on or before June 30th of the current fiscal year.

Section 13.6 Directors' Rights of Inspection

Every Director shall have the right at any reasonable time to inspect the books, records, documents of every kind, and physical properties of the Corporation and each of its subsidiaries. The inspection may be made in person or by the Director's agent or attorney. The right of inspection includes the right to copy and make extracts of documents.

Section 13.7 Public Right of Inspection

Records maintained by the Corporation shall be available to the public to inspect or copy at all times during the office hours of the Corporation, pursuant to and with the exceptions provided in Education Code Sections 72690 et seq.

Section 13.8 Corporate Seal

The corporate seal, if any, shall be in such form as may be approved from time to time by the Board. Failure to affix the seal to corporate instruments, however, shall not affect the validity of any such instrument.

ARTICLE 14 EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS

Section 14.1 Execution of Instruments

The Board, except as otherwise provided in these Bylaws, may by resolution authorize any Officer or agent of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. Unless so authorized, 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 monetarily for any purpose or in any amount.

Section 14.2 Procedure for Approving Expenditures; Checks and Notes

Except as otherwise specifically determined by resolution of the Board, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the Corporation shall be signed by the Treasurer and countersigned by the President.

Section 14.3 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 may select.

Section 14.4 Acceptance of Funds

The Board may accept on behalf of the Corporation or District any contribution, gift, bequest, or devise for investment purposes and for distribution in accordance with the donor's instructions,

provided that the Board makes a finding that the acceptance and disbursement of the funds by the Corporation are within the charitable or public purposes of the Corporation. The Board shall 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.

ARTICLE 15 CONSTRUCTION AND DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions of California Nonprofit Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of the above, the masculine gender includes the feminine and neuter, the singular number includes the plural, the plural number includes the singular, and the term “person” includes both the Corporation and a natural person. All references to statutes, regulations and laws shall include any future statutes, regulations and laws that replace those referenced.

ARTICLE 16 AMENDMENTS

Section 16.1 Amendment by Directors

The Board may adopt, amend or repeal bylaws. Such power is subject to the following limitations:

- (a) Where any provision of these Bylaws requires the vote of a larger proportion of the Directors than otherwise is required by law, such provision may not be altered, amended or repealed except by the vote of such greater number.
- (b) No amendment may extend the term of a Director beyond that for which such Director was elected.
- (c) If bylaws are adopted, amended or repealed at a meeting of the Board, such action is authorized only at a duly called and held meeting for which written notice of such meeting, setting forth the proposed bylaw revisions with explanations therefor, is given in accordance with these Bylaws, unless such notice is waived in accordance with these Bylaws.

Any action to adopt, amend, or repeal the bylaws will take effective only upon final authorization by the District’s Board of Trustees.

CERTIFICATE OF SECRETARY

I certify that I am the duly elected and acting Secretary of **The Foundation for Chabot-Las Positas Community College District**, a California nonprofit public benefit corporation; that these Bylaws, consisting of ___ pages, are the Bylaws of this Corporation as adopted by the Board of Directors on _____; and that these Bylaws have not been amended or modified since that date.

Executed on _____ at _____, California.

[NAME]
Secretary