



April 28, 2022

**TO:** THE DISTRICT BOARD OF TRUSTEES OF VALENCIA COLLEGE

**FROM:** DR. KATHLEEN PLINSKE  
President

**RE:** VALENCIA COLLEGE FOUNDATION CERTIFICATION AGREEMENT

In accordance with s.1004.70, and s.1001.64(39), F.S., the College prescribes the conditions for the use of College property, facilities and personal services by the Foundation, and prescribes conditions upon which the College certifies the Foundation as operating in a manner consistent with the goals of the College. In addition, the accrediting body for the College, the Southern Association of Schools and Colleges Commission on Colleges, requires that the legal authority and operating control of the College with respect to the Foundation be clearly defined, and that such activities are defined in a formal, written manner which assures that those activities further the mission of the College

This Agreement will support the College's certification of the Foundation (as is required by law), comport with College accreditation requirements, and establish and memorialize the parameters of the College's oversight of and relationship to the Foundation, the sharing of resources by the College and the conditions, requirements, policies, rules and laws governing the Foundation and its operations.

**RECOMMENDED ACTION:**

The President recommends that the District Board of Trustees of Valencia College authorize the College to execute the Certification Agreement as presented and reviewed.

A handwritten signature in black ink that reads "Kathleen Plinske". The signature is written in a cursive style and is positioned above a horizontal line.

President

# VALENCIA COLLEGE

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## CERTIFICATION AGREEMENT

This Certification Agreement (the “Agreement”) is entered into effective the \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the District Board of Trustees of Valencia College, Florida (“College”) and the Valencia College Foundation, Inc. (“Foundation”). The College and the Foundation are sometimes collectively referred to herein separately as a “Party” and collectively as the “Parties.”

**WHEREAS**, the Foundation is a Florida corporation not for profit, incorporated under the provisions of chapter 617 F.S. and approved by the Department of State, recognized as a tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code, and a Florida College System institution direct-support organization as set forth in s. 1004.70, F.S., organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to, or for the benefit of, the College; and

**WHEREAS**, in accordance with s. 1004.70, F.S., and s. 1001.64(39), F.S., the College prescribes the conditions for the use of College property, facilities, and personal services by the Foundation, and prescribes conditions upon which the College certifies the Foundation as operating in a manner consistent with the goals of the College and in the best interests of the State of Florida; and

**WHEREAS**, the accrediting body for the College, the Southern Association of Schools and Colleges Commission on Colleges (“SACSCOC”), requires that the legal authority and operating control of the College with respect to the Foundation be clearly defined, including that the College President control the fund-raising activities of the Foundation or that such activities are defined in a formal, written manner which assures that those activities further the mission of the College; and

**WHEREAS**, as such, the College desires to specify the terms and conditions of operation applicable to the Foundation as required by Florida law and SACSCOC; and

**WHEREAS**, the Foundation and the College intend for this Agreement, along with the Foundation’s Articles of Incorporation and Bylaws, to support the College’s certification of the Foundation, and to establish and memorialize the parameters of the College’s oversight of the Foundation, the sharing of resources by the College and the conditions, requirements, policies, rules, and laws governing the Foundation and its operations.

**NOW, THEREFORE**, in consideration of the mutual covenants and undertakings herein, the College and the Foundation hereby agree as follows:

## **ARTICLE I FOUNDATION'S PURPOSES**

The Foundation has been established and is certified by the College to receive and administer private gifts, bequests, and grants from the public for the benefit of the College. Accordingly, in a manner consistent with the Foundation's Articles of Incorporation and By-Laws, applicable laws and regulations, and prudent philanthropy practices, the Foundation solicits, receives, and accepts gifts, devises, bequests, and other direct or indirect contributions of money and other property made for the benefit of the College from the general public (including individuals, corporations, other entities, and other sources); manages and invests, when appropriate, the gifts it receives for the benefit of the College; expends funds for the benefit of the College; and may engage in other activities in support of its purposes, such as alumni relations.

## **ARTICLE II GOVERNANCE ELEMENTS**

A. *Articles/By-Laws.* Changes to the Foundation's Articles of Incorporation and By-Laws are subject to the approval of the College.

B. *Ex Officio Foundation Board Members.* At a minimum, and as provided in s. 1004.70, F.S., the Articles and/or By-Laws of the Foundation shall specify that the Chair of the College's Board of Trustees shall appoint a representative to the Foundation's Board of Directors and the Executive Committee and that the President of the College, or the President's designee, shall serve on the Board of Directors and its Executive Committee. Such board members serve as ex-officio, voting members of the Foundation's Board of Directors and Executive Committee.

C. *Conflicts of Interest Policy.* The Foundation will maintain and follow a written policy addressing the manner in which the Foundation will address conflict of interest situations.

D. *Sunshine Laws.* The Foundation is subject to Florida's Sunshine laws, including the Open Meetings Law and the Public Records Law, and shall comply with all applicable requirements. As provided in s. 1004.70 F.S., all records of the Foundation, other than the auditor's report, any information necessary for the auditor's report, any information related to the expenditure of funds, and any supplemental data requested by the District Board of Trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability, are confidential and exempt under Florida's Public Records Law.

## **ARTICLE III FOUNDATION EXECUTIVE DIRECTOR**

A. *Status.* The Executive Director of the Foundation is an employee of the College who is assigned to the Foundation. The Foundation's Executive Director reports jointly to the College President (or designee) and the Foundation Board of Directors via the Chair of the Board of Directors. The Foundation Executive Director is selected by the College President and confirmed by the Foundation Board of Directors. Members of the Foundation's Board of Directors participate in the selection process for the Executive Director. The hiring of an Executive Director will be done in accordance with College procedures (such as College equal employment procedures), and applicable laws

(including laws applicable to the College).

*B. Responsibilities.* The Executive Director shall be responsible for the supervision and control of the day-to-day operations of the Foundation. The Executive Director's authorities and duties on behalf of the Foundation shall be established by the Foundation's Board of Directors.

*C. Personnel Decisions.* The evaluation, suspension, removal, and annual appointment of the Executive Director shall be the responsibility of the College President with the input of, and in consultation with, the Foundation Board Chair.

#### **ARTICLE IV USE OF COLLEGE PROPERTY, FACILITIES, AND PERSONAL SERVICES**

*A. College Assigned Employees.*

1. The College will employ all employees who work on behalf of the Foundation. All College employees who are assigned to work on behalf of the Foundation will report through the Executive Director of the Foundation and will be subject to salary schedules and receive College benefits to the same extent and on the same terms as other College employees of the same or similar classifications.

2. The College's personnel policies and procedures will be followed by the College and Foundation. Subject to the College's personnel policies and procedures, the Foundation must provide the College with prior approval to hire any employee who will be assigned to the Foundation, and an employee assigned to the Foundation may be removed from the assignment and/or terminated from employment by the College at the request of the Foundation.

3. Salary and benefit costs for all College assigned employees, including the Executive Director, will be charged back to the Foundation, which will be responsible for such costs. Any increases in salaries and/or benefits for College assigned employees approved by the College also must be approved by the Foundation before implementation by the College. Such Foundation approval may be indicated by inclusion in the Foundation's budget.

*B. Support Services.*

1. As requested by the Foundation, the College will provide administrative support in financial, accounting, investment, legal, and development services to the Foundation, as well as other support services such as courier service, information technology support, maintenance, custodial services, and utilities. Such support as provided by the College generally will be considered *de Minimis*, and such support costs will be the responsibility of the College. Costs not considered to be *de Minimis* as incurred by the College on behalf of the Foundation will be recorded and summarized at the College's fiscal year-end. This amount will be noted as an in-kind contribution to the Foundation.

2. All College employees who provide support services to the Foundation pursuant to Section B will remain College employees under the direction and control of the College unless their assignments expressly include working on behalf of the Foundation.

*C. Supplemental Compensation of College Employees.*

1. No College employee will receive direct payments, compensation, or other benefits from the Foundation, except for approved expenses.
2. The Foundation is responsible for paying for reasonable and necessary business expenses, such as travel and hospitality.

*D. Insurance.* The Foundation will determine the appropriate insurance to maintain to cover operations and activities. The College will provide the Foundation with insurance coverage(s) furnished under the College's existing insurance coverage provided by the Florida College System Risk Management Consortium ("FCSRMC"), as may be available and applicable to the Foundation as a Florida direct-support organization, without charge to the Foundation. To the extent FCSRMC coverage is not available or the Foundation has determined that additional or enhanced insurance coverage is appropriate, the Foundation will procure the same at its own expense.

*E. College Facilities, Equipment, and Supplies.*

1. The College will provide office space to the Foundation at no charge, commensurate with office space needs as requested by the Foundation and approved by the College's Vice President of Business Operations and CFO. Costs associated with any new furniture to be procured and used in the space occupied by the Foundation will be the responsibility of the Foundation.
2. Should the Foundation move in full or part to another facility that is not owned by the College, the Foundation will be responsible for all costs related to the use of the alternate facility.
3. The costs of equipment (e.g., computers, copiers) and associated services provided by the College to the Foundation will be charged back to the Foundation. The cost of office supplies and other operating costs that directly support the Foundation shall be paid for by the Foundation.

**ARTICLE V**  
**SPECIAL GIFT ACCEPTANCE CONSIDERATIONS**

*A. College Approval Required Before Acceptance of Certain Gifts.* The Foundation solicits, receives, and accepts gifts, devises, and bequests on behalf of the College and is responsible for establishing a system of internal controls for their management, including ensuring donor intent is appropriately documented in gift/grant instruments and that it is followed. Before accepting private gifts or grants that require a College contribution beyond what is covered by the gift or grant itself or involve naming rights related to College programs or property, the Foundation will obtain the prior written approval of the College.

*B. Acceptance of Gifts of Real Property.* The Foundation will conduct appropriate due diligence on all gifts of real property that it receives. In cases where the real property is intended to be used by the College in connection with carrying out its proper functions, the real property may be conveyed directly to the College, in which case the College and not the Foundation will be responsible for the due diligence obligations for such property.

## **ARTICLE VI RECORDS MANAGEMENT**

*A. Records Retention and Destruction Policy.* The Foundation is responsible for adopting and implementing a records retention and destruction policy for purposes of managing Foundation records, including, but not limited to, the Foundation's Articles, By-Laws, and other governing documents, all necessary documents for compliance with IRS regulations, gift instruments, and all other Foundation records as required by applicable law.

*B. Confidential Information.* The Foundation receives, maintains, and generates donor information and other confidential information considered confidential and exempt under Florida's Public Records Law. The Foundation is responsible for implementing operational and security controls appropriate to maintaining the confidentiality of Foundation records. Access to such confidential information by the College will be limited to the College's President and other College employees and representatives determined by the Foundation, through its Executive Director or Board Chair, to have a need to know the information for purposes of fulfilling the Foundation's purposes or the College's exercise of oversight of the Foundation.

## **ARTICLE VII MUTUAL GRANT OF LICENSES FOR USE OF NAMES AND MARKS**

Each Party hereby is granted a general, non-exclusive, royalty-free license to use the corporate name and marks of the other, specifically: "Valencia College" and "The Valencia College Foundation" and "The Valencia College Foundation, Inc." in all activities conducted in association with or for the benefit of the other. Use of the other Party's name/marks must be in a manner that clearly identifies the Parties as separate entities, and neither Party may use the other Party's name to imply approval or action of the other Party. Specifically, by mutual agreement, the Foundation may utilize the College's seal, logo, or other identifying marks in the promotion of its business and activities. Neither Party may delegate, assign, or sublicense the rights granted hereunder without express written consent from the other Party. Use of other marks must receive prior written approval.

## **ARTICLE VIII AUDIT AND REPORTING REQUIREMENTS**

*A. Annual Audit.* The Foundation will provide for an annual financial audit in accordance with rules adopted by the Auditor General pursuant to s. 11.45(8), F.S. The annual audit report must be submitted, within nine months after the end of the fiscal year, to the Auditor General, the State Board of Education, and the District Board of Trustees for review. The District Board of Trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability may require and receive from the Foundation or its independent auditor any detail or supplemental data relative to the operation of the Foundation. The identity of donors who desire to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report.

*B. Annual Reporting to President and District Board of Trustees.* Annually, at the times specified by the College President or designee(s), the Foundation will submit the following items to the College President, which as required by law or College policies or practices, will also be submitted to the District Board of Trustees for review:

1. Annual Audit;
2. IRS Return of Organization Exempt from Income Tax form (Form 990);
3. Foundation's Annual Report;
4. IRS Application for Recognition of Exemption form (Form 1023); and
5. Such other documents or information as may be requested from time to time.

*C. Accounting Transactions.* Except as may be otherwise agreed upon by the College CFO and the Foundation's Executive Director, accounting transactions (other than in-kind) will be completed and transferred between the College and the Foundation each month. The in-kind entry will be completed once a year.

*D. Internal Controls.* The Foundation is responsible for establishing a set of internal controls appropriate to its operations and reviewing and testing such internal controls on a regular basis. The College's Office of Compliance and Audit ("OCA") will review and test such internal controls as part of the OCA's normal schedule of routine internal controls reviews, or as otherwise deemed necessary. Periodically, the Foundation shall also engage a qualified external firm to conduct such internal controls reviews on a schedule determined to be prudent by the Foundation's Board or applicable Board committee.

## **ARTICLE IX MISCELLANEOUS**

*A. Mutual Cooperation.* This Agreement sets forth certain important agreements and understandings between the Parties but is not a full and complete list of all aspects of the relationship between the Parties. To this end, each Party agrees to cooperate with the other and will provide such documents, information, and services in support of the College's and the Foundation's missions and purposes, in as timely a fashion as reasonable between the Parties.

*B. Contractual Commitments of Parties.* Neither Party will enter into any contract that would impose a financial or contractual obligation on the other without first obtaining the prior written approval of the other.

*C. Approval of Foundation Debt Issuances.* In accordance with s. 1004.70(4)(e), the College's District Board of Trustees shall authorize all debt, including lease-purchase agreements, incurred by the Foundation, except for short-term loans and lease-purchase agreements for a term of not more than 5 years (including renewals and extensions) for goods, materials, equipment, and services for which approval of the College is not required.

*D. No Political Committee Gifts.* In accordance with s. 1004.70(4)(d), the Foundation is prohibited from giving, either directly or indirectly, any gift to a political committee as defined in s. 106.011, F.S. for any purpose.

*E. College Direct-Support Organization Rules and Policies.* The College may, from time to time, establish policies and rules applicable to the Foundation as a direct-support organization, pursuant to s. 1004.70, F.S. The Foundation will comply with all such policies and rules.

*F. Decertification.* The College may decertify the Foundation if the College's Board of Trustees determines that the Foundation is no longer serving the best interest or mission of the College and decertification is appropriate.

*G. Review of Agreement.* This Agreement will be reviewed by the Parties at least every two (2) years and updated as needed.

*H. Amendments.* This Agreement may be amended at any time by the mutual written agreement of the Parties.

**IN WITNESS WHEREOF**, the Foundation and the College have executed this Agreement on the above-specified date.

WITNESSES:

**VALENCIA COLLEGE  
FOUNDATION, INC.**

\_\_\_\_\_  
(Witness #1 Signature)

By: \_\_\_\_\_  
Chair, Board of Directors

\_\_\_\_\_  
(Witness #2 Signature)

By: \_\_\_\_\_  
Interim Executive Director

WITNESSES:

**DISTRICT BOARD OF TRUSTEES OF  
VALENCIA COLLEGE, FLORIDA**

\_\_\_\_\_  
(Witness #1 Signature)

By: \_\_\_\_\_  
Chair, District Board of Trustees

\_\_\_\_\_  
(Witness #2 Signature)

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