

Memorandum of Understanding  
Between the Wharton County Junior College Foundation  
And the Wharton County Junior College District  
Amended ~~1-16-2019~~13-2019

THIS AGREEMENT, entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the Wharton County Junior College District (“the College”) and the Wharton County Junior College Foundation (“the Foundation”).

The Foundation was organized and incorporated in 1954 for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, foundations, and others for the benefit the College District. On August 21, 2006, The Foundation’s Articles of Incorporation were amended to state “The Corporation (Foundation) is organized exclusively for educational purposes within the meaning of section 501(c) (3) of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States Internal Revenue law).” The Corporation (Foundation) shall receive and disburse funds, property and gifts of any kind exclusively for the benefit of Wharton County Junior College, its faculty, staff and students.

The Foundation is dedicated to assisting the College in the building of the endowment and addressing, through financial support, the long-term academic and other priorities of the College District.

The Foundation is a separately incorporated 501(c) (3) organization and is responsible for identifying and nurturing relationships with potential donors and other friends of the College; soliciting cash, securities, real and intellectual property, and other private resources for the support of the College; and acknowledging and stewarding such gifts in accordance with donor intent and its fiduciary responsibilities.

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

## WHARTON COUNTY JUNIOR COLLEGE FOUNDATION

Consistent with its mission to help to advance the plans and objectives of the College, the Foundation is granted the use of the name, Wharton County Junior College; however, the Foundation will operate under its own seal and logotype and shall not use the college seal or other identifying marks in the promotion of its business and activities.

## WHARTON COUNTY JUNIOR COLLEGE

- The Board of Trustees of the College is responsible for overseeing the mission, leadership, and operations of the College.
- The Board of Trustees is responsible for setting priorities and long-term plans for the College.
- The Board of Trustees is legally responsible for the performance and oversight of all aspects of the College operations.
- The Board of Trustees is responsible for the employment, compensation, and evaluation of the College president.

## The Foundation's Relationship to the Institution

- The Foundation Board of Directors is responsible for the control and management of all assets of the Foundation, including the prudent management of all gifts consistent with donor intent.
- The Foundation is responsible for the performance and oversight of all aspects of its operations in accordance with its bylaws that clearly address the board's fiduciary responsibilities.
- ~~The Foundation will provide the College with an annual independent audit of all foundation assets.~~
- ~~The Foundation may pay a portion of its unrestricted funds to a discretionary fund for the president of the College. (Note: All such expenditures must comply with the I.R.S. 501(c) (3) code and be consistent with the Foundation's mission. Such funds will be audited as part of the Foundation's annual independent audit).~~
- The Foundation and the College will adhere to the Memorandum of Understanding (MOU) between the Foundation and the College.

- The Foundation upon prior written agreement will compensate the College for fund-raising expenses, including the use of college employees for assistance in fund-raising activities.

### The Institution’s Relationship to the Foundation

- The College President has ultimate responsibility for, and exercises control over the College’s fund-raising activities. The College President is responsible for communicating the College priorities and long-term plans. The Foundation’s fund-raising activities ~~require written approval of the College President, and~~ must be defined in a formal, written manner that assures those activities further the mission of the College.
- The College recognizes that the Foundation is a private corporation not intended to be a “governmental body” under the Texas Public Information Act, but is a private entity with the authority to keep all records and data confidential. Any confidential information shared with the College remains the sole and proprietary information of the Foundation, and may not be disclosed except as otherwise provided in this agreement. Notwithstanding the foregoing, both parties agree to comply with the Texas Public Information Act to the extent that is applicable, as well any public information rulings issued by the Texas Attorney General.
- ~~The College President shall serve as a member of the Foundation Board of Directors. The Chair of the Wharton County Junior College Board of Trustees or board of trustee designee and the President of Wharton County Junior College shall serve as members of the Board of Directors.~~
- ~~Under the direction of the College President, the College will provide administrative and staff support for the Foundation. The Foundation will reimburse the College for any such support, at based on a prior written agreement a rate to be negotiated by both parties on an annual basis.~~

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### Foundation Responsibilities

- The Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of the College.
- ~~The Foundation activities include fund-raising and donor-acquisition programs in support of the College’s mission. These programs may include annual giving, major gifts, planned gifts, special projects, and campaigns. Foundation fund-raising projects must have formal prior written approval by the College President and may not conflict with College fund raising activities.~~

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- The Foundation will establish, adhere to, and periodically assess its gift-management and acceptance policies. The Foundation will promptly inform the College President of gifts and college representatives will provide appropriate recognition and issue receipts for all gifts on behalf of the Foundation and the College.
- The Foundation may not accept grants from state or federal agencies.
- The Foundation shall establish and enforce policies to protect donor confidentiality and rights.
- ~~The Foundation shall provide the College with an annual independent audit.~~
- The Foundation will maintain Business and Management Indemnity Insurance for the Foundation Directors and Officers. A copy of the coverage will be provided to the College.

#### Asset Management

- The Foundation may serve as an instrument for entrepreneurial activities for the College and engage in such activities as purchasing, developing, or managing real estate for college expansion, student housing, or retirement communities. It also may hold licensing agreements and other forms of intellectual property, borrow or guarantee debt issued by their parties, or engage in other activities to increase Foundation revenue.
- When distributing gift funds to the College, the Foundation will disclose any terms, conditions, or limitations imposed by a donor or legal restriction on the gift. The College will abide by such restrictions and provide appropriate documentation to confirm its compliance.

#### Transfer of Funds

- The Foundation is a depository of private gifts and will transfer funds to the designated entity within the institution in compliance with applicable laws, college policies, and gift agreements.
- The Foundation's disbursement of funds, property or other things on behalf of the College must be consistent with donor intent and do not conflict with the College mission and the law.

#### Terms of the Memorandum of Understanding (MOU)

This Memorandum of Understanding, made this \_\_\_\_\_day of \_\_\_\_\_, 2019, by and between the College Board of Trustees and the Foundation.

To ensure effective achievement of this agreement, the College and Foundation board members, officers and representatives shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.

The College, upon 90 days prior written notice to the Foundation, may terminate this agreement. Notwithstanding the foregoing, the College may terminate this agreement in the event the other party defaults in the performance of its obligations and fails to cure the default within a reasonable time after receiving written show cause notice.

Should the College District choose to terminate this agreement, the Foundation may require the college to pay, within 180 days of written notice, all debt incurred by the Foundation on the College District's behalf including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives.

Consistent with provisions appearing in the Foundation's bylaws and its articles of incorporation, should the Foundation cease to exist or cease to be an Internal Revenue Code 501 (c) (3) organization, the Foundation assets and property shall pass to and become the property of the College.

\_\_\_\_\_  
Chair  
Board of Wharton County Junior College

\_\_\_\_\_  
President  
Board of Wharton County Junior College  
Foundation

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

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