



**Wharton County  
Junior College**

**Proposed Agenda Item  
Board of Trustees Meeting**

Complete this form and submit it to the Office of the President by 5:00 pm on the eleventh day before the following Tuesday meeting of the Board of Trustees. If this form does not provide enough space, you may use an expanded version *as long as you follow the format specified below.*

Date of Board Meeting: January 15, 2019

Date of This Proposal: January 7, 2019

**SUBJECT (item as it will appear on agenda):**

Amended Memorandum of Understanding (MOU) between the Wharton County Junior College Foundation and the Wharton County Junior College District

**RECOMMENDATION:**

Approve the amended MOU as submitted by administration.

**BACKGROUND/RATIONALE:**

The last amendment to the MOU between the Wharton County Junior College Foundation and the Wharton County Junior College District was approved on September 20<sup>th</sup>, 2016. The proposed 2019 amended MOU contains language responding to updated requirements from the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC). In addition, the roles of both entities are clearly defined in the amended document. The college attorney has reviewed the changes to the MOU.

**Estimated Cost and Budgetary Support (how will this be paid for?):** \$-0-

**RESOURCE PERSON(S) [name(s) and title(s)]:**

Betty McCrohan, President

**SIGNATURES:**

Betty A. McCrohan  
Originator

1-10-19  
Date

Betty A. McCrohan  
Cabinet-Level Supervisor

1-10-19  
Date

**PRESIDENT'S APPROVAL:**

Betty A. McCrohan

1-10-19

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

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 will adhere to the Memorandum of Understanding (MOU) between the Foundation and the College.
- The Foundation 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.
- 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 a rate to be negotiated by both parties on an annual basis.

## 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.
- 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.

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.

\_\_\_\_\_  
President

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

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

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

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

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

**CURRENT MOU BETWEEN THE WHARTON COUNTY JUNIOR COLLEGE  
FOUNDATION AND THE WHARTON COUNTY JUNIOR COLLEGE DISTRICT  
AMENDED AUGUST 16, 2016**

**Memorandum of Understanding  
Between the Wharton County Junior College Foundation  
And the Wharton County Junior College District  
Amended 8-16-2016**

THIS AGREEMENT, entered into as of this 20th day of September, 2016, by and between the Wharton County Junior College District ("College District") and the Wharton County Junior College Foundation ("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 of the College District.

The Foundation exists to raise and manage private resources supporting the mission and priorities of the College District, and provide opportunities for students and a margin of institutional excellence unavailable with state funds.

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 District; soliciting cash, securities, real and intellectual property, and other private resources for the support of the College District; 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 District, 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 DISTRICT

- The Board of Trustees of the College District 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 District.
- The Board of Trustees is legally responsible for the performance and oversight of all aspects of the College District operations.
- The Board of Trustees is responsible for the employment, compensation, and evaluation of the College District employees, including the 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 is responsible for the employment, compensation, and evaluation of all its employees, if any.
- 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 Institution's Relationship to the Foundation

- The College District president is responsible for communicating the College District priorities and long-term plans, as approved by the board, to the Foundation.
- The Wharton County Junior College District shall include the Foundation as an active and prominent participant in the strategic planning for the college.
- The president of the College District shall serve as an ex-officio member of the Foundation board and shall assume a prominent role in fund-raising activities and assure that all fund-raising activities further the mission of the college. The College District president will work in conjunction with the leadership of the Foundation board to identify, cultivate, and solicit prospects for private gifts.
- The College District recognizes that the Foundation is a private corporation with the authority to keep all records and data confidential and consistent with the law. The College District recognizes that the Foundation is 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 District 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 it is applicable, as well as any public information rulings issued by the Texas Attorney General.

## Foundation Responsibilities

- The Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of the College District.
- The Foundation, in consultation with the College District president, is responsible for planning and executing comprehensive fund-raising and donor-acquisition programs in support of the institution's mission. These programs include annual giving, major gifts, planned gifts, special projects, and campaigns as appropriate.
- The Foundation will establish, adhere to, and periodically assess its gift-management and acceptance policies. The Foundation will promptly inform the College District president of gifts and college representatives will provide appropriate recognition and issue receipts for all gifts on behalf of the Foundation and the College District.

- The Foundation recognizes that the Foundation bears major responsibility for fund-raising. College District representatives will coordinate fund-raising initiatives including major gifts solicitations with the Foundation.
- The Foundation may not accept grants from state or federal agencies, unless approved by the College District Board of Trustees.
- The Foundation shall establish and enforce policies to protect donor confidentiality and rights.
- The College Foundation agrees that it will reimburse the College District for the time spent by College District personnel on Foundation business. The Foundation will also reimburse the College District for expenses covered by the College District, including travel, marketing and advertising, and general supplies. The rate of such reimbursement shall take in account the reasonably identifiable amount of funds benefitting the College District to ensure an adequate *quid pro quo* reimbursement.
- If necessary, the Foundation will lease office space from the College District under a separate lease agreement according to the terms and conditions therein.

### Asset Management

- The Foundation will explore opportunities, including acquisition and management of real estate on behalf of the College District for future allocation, transfer, or use.
- 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 District will abide by such restrictions and provide appropriate documentation.

### Transfer of Funds

- The Foundation is a primary 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 College 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 \_\_\_\_\_, 2016, by and between the board of the College District and the Foundation.


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

Either party may, upon 90 days prior written notice to the other, terminate this agreement. Notwithstanding the foregoing, either party 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. Should the Foundation choose to terminate this agreement, the College District may require the Foundation to pay the debt it holds on behalf of the Foundation in like manner.

Consistent with provisions appearing in the Foundation's bylaws and the articles of incorporation, should the Foundation cease to exist or cease to be an Internal Revenue Code 501 (c) (3) organization, the Foundation will transfer its assets and property to the College District, in accordance with the law and donor intent.

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

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

Date: 9-20-16

Date: 9-20-16