

AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

THIS AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING (the “2019 MOU”) is entered into and effective this ____ day of _____, 2019 by and between:

TARRANT COUNTY COLLEGE DISTRICT (hereinafter referred to as the “District”), a Texas community college and governmental body organized pursuant to Section 130 *et. seq.* of the Texas Education Code, of Tarrant County, Texas; and

TARRANT COUNTY COLLEGE FOUNDATION (hereinafter referred to as the “Foundation”), a Texas nonprofit corporation under Chapter 22 of the Texas Business Organizations Code and duly recognized as a tax-exempt public charity pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

I.
RECITALS

Whereas, the Foundation is organized, and at all times operates, exclusively for the purposes of benefitting, performing the functions of, or carrying out the purposes and programs of the District and its students.

Whereas, the District desires to continue to assume certain expense responsibilities and provide administrative and other support for the Foundation, and the Foundation desires to continue to operate for the benefit and to relieve burdens of the District;

Whereas, the District and the Foundation agreed that working jointly to raise and expend funds best serves the educational and service missions of their respective organizations and serves the mutual public service and/or charitable and educational missions of each party;

Whereas, on about December 10, 2009, the parties entered into a Memorandum of Understanding (the “2009 MOU”) whereby the District and the Foundation memorialized their joint desire to coordinate, document and clarify the mutual benefits and expectations from their respective missions and shared responsibilities; and

Whereas, the District and the Foundation desire to amend and restate the 2009 MOU by this 2019 MOU pursuant to the terms stated herein.

Now therefore, in consideration of each party’s responsibilities and the understandings contained in this Memorandum, the parties identify the following understandings as to the processes and responsibilities between the parties so as to further their joint cooperation and missions:

II.
RESPONSIBILITIES OF DISTRICT

1. Appointment of Executive Director. The District shall employ and assign an executive officer of the District to serve as the Executive Director and chief executive officer (“Executive Director”) to the Foundation. In the event the position of Executive Director of the Foundation becomes vacant, the District shall form an Executive Director Search Committee which shall consist of at least five (5) members, two (2) of which shall be current members of the Foundation’s Board of Directors not also serving as Chancellor or a Trustee of the District.

2. Understanding of Duties of Executive Director. The Executive Director, as a condition of his or her employment by the District, shall be generally responsible for the following nonexclusive areas of operations of the Foundation:

- a. Providing overall management of the Foundation’s programs and operations;
- b. Promoting financial growth and stability of the funds managed by the Foundation;
- c. Building relationships with the Foundation’s Board of Directors, the District’s Board of Trustees, and administrators and key stakeholders, and otherwise serving as the “face of the Foundation”;
- d. Responding to the Foundation’s proposed fundraising activities or strategies, and ensuring programmatic and fundraising activities correspond with and support the mission and strategic plans for the Foundation;
- e. Proposing a budget to support the Foundation’s activities, and meeting financial goals through efficient management;
- f. Working with the Foundation’s Board of Directors to develop long-range strategic plans for the Foundation and its charitable purposes, including management and supervision, scholarship applications, board relations, fundraising and budget development, and finance and audit;
- g. Providing data or other information collected by the District in the course of conducting its educational and service activities, and approving the use of the District’s name in fundraising materials or communications; and
- h. Shall be appointed as a member of the Chancellor’s cabinet, executive leadership team, or similar representative body engaged in the oversight and molding of the strategic direction and community mission of the District.

3. Executive Director Reporting and Compensation. The Executive Director shall report directly to the District Chancellor’s Office of the College District (or to the designee appointed by the Chancellor) and to the Chair of the Foundation’s Board of Directors. In

accordance with the District's policies, regulations, and other rules, the Chancellor of the District (or the appointed designee) shall evaluate the work and employment of the Executive Director, and in this regard, the Foundation shall not possess any oversight, control and supervision of the Executive Director. The District shall be solely responsible for the compensation owed to or arranged with the Executive Director, and the District agrees to employ the Executive Director in accordance with the terms of an Employment Agreement between the District and the Executive Director consistent with this 2019 MOU. The Foundation may agree to reimburse the District for one or more elements of the Executive Director's compensation. The Foundation's Board of Directors shall be involved in the evaluation of the Executive Director. The input of the Foundation's Board of Directors shall be sought prior to the annual evaluation of the Executive Director.

4. Support for Foundation Operations. For the purposes of enabling the Foundation to engage in activities that promote the mission of and contribute to the District, its activities, students and employees, the District agrees to provide the following as may be reasonably necessary to effectuate these purposes:

- a. Support for Foundation Operations. The District agrees to assign District employees (including the Executive Director) as reasonably necessary to support the Foundation's operations and activities performed on behalf of the District, including for:
 - i. Management and professional direction;
 - ii. Clerical support;
 - iii. Internal financial records keeping; and
 - iv. Public relations and media relations.
- b. Responsibility for Administration of Staff. With respect to all District staff assigned to the Foundation, the District shall follow all of its personnel policies and procedures, as may be amended. Except for the Executive Director, the District shall be solely responsible for the hiring, supervision and direction of the District's staff, and the District shall be responsible for all employment benefits, payroll taxes, deductions, record-keeping and related administrative functions associated as employer of such staff.
- c. Provision of Office Space and Related Items. As a cost effective means to permit the District and the Foundation to pursue their common goals, the District shall provide office space, access to necessary meeting space, and use of the District's telecommunications systems, on-site copying machines, and computing/electronic mail system.
- d. Inclusion of Foundation as an Additional Insured Under Specific District Insurance Policies. In order to enable the Foundation to attract high quality

members to serve the Foundation as executives, officers and/or directors and to be able to efficiently and effectively engage in fundraising activities that directly benefit the District and its activities, the District shall include the Foundation under its policy(ies) of liability and commercial general liability policy(ies). The District's schedule for its property insurance policy shall include all District-provided and purchased equipment, furniture and other property provided for use by the Foundation.

- e. Recognition of Separateness. The District recognizes that, as stated in the Foundation's Articles of Incorporation and Bylaws, the Foundation is a separately incorporated Texas nonprofit corporation and shall maintain the right to keep all Foundation meetings, records and data confidential, consistent with and/or except as otherwise provided by applicable law.
5. Acceptance of Funds from Foundation.
- a. The District agrees that the Foundation shall be the channel for all philanthropic giving to the District and scholarship support for students, and the District will take reasonable steps to promote, market and elevate the Foundation's status in this regard in the community, both local, state and beyond.
 - b. The District shall accept funds from the Foundation for the purpose of promoting the well-being and advancement of the District and the campuses comprising the District; improving the operations so as to provide expanded educational advantages and opportunities; encouraging teaching, scholarship, and service; providing financial scholarships to students; and increasing the District's services to the taxpayers and residents of the District.
 - c. The District shall ensure that any legally restricted funds are expended strictly in accordance with the terms and conditions as may be imposed by a donor, and the District shall notify the Foundation of all restrictions on funds provided to the management of the Foundation pursuant to this or any related agreement.
 - d. All non-restricted funds that are provided for the use of the District shall be expended in a manner that exclusively serves the charitable or public education purposes of the District.
 - e. The District shall, upon request of the Foundation, account for the expenditure of funds provided to the District by the Foundation.

III. RESPONSIBILITIES OF THE FOUNDATION

6. Foundation Operations. Consistent with the Foundation's charitable purposes as set forth in the Foundation's Bylaws and Articles of Incorporation, as amended, the Foundation's

operations shall be exclusively for the purposes of benefitting, performing the functions of, or carrying out the purposes and programs of the District and its students. The Foundation agrees to follow the requirements contained in the Foundation's Articles of Incorporation and Bylaws, as may be amended, regarding the appointment of members to the Foundation Board of Directors, and the District agrees the Foundation may amend its Bylaws so long as any such amendment does not reduce the number of District-appointed members of the Foundation's Board, being the District's Chancellor and two (2) current members of the District's Board of Trustees.

7. Foundation Fundraising and Financial Management. The Foundation will collect, hold endowments of, manage the investment of, and distribute to the District funds and assets for benefit of students and college programs contributed or given to the Foundation by and from all sources other than those required for the reasonable operation of the Foundation in accordance with the specific terms of a gift or contribution. It is the intent of the parties that the Foundation, being the preferred channel of all philanthropic giving to the District, will manage and coordinate fundraising activities for the District, except for the activities described below:

- a. Fundraising conducted by students groups and clubs;
- b. Fundraising conducted by employee groups to the extent authorized by the District to be conducted without oversight or participation by the Foundation.
- c. Grants from federal and state governments; and
- d. Other fundraising activities not controlled, promoted or sanctioned by the Foundation and/or mutually agreed not to be the responsibility of the Foundation.

8. Entrepreneurial Activities. The District understands that the Foundation may explore business and investment opportunities on an on-going basis. The Foundation may also serve as a vehicle for entrepreneurial activities for the District and engage in such activities as purchasing, developing, or managing real estate for District expansion, student housing or other educational purposes, or participating in joint ventures that advance the mission of the Foundation and the District. The Foundation will consult, communicate, and collaborate with the District on such strategies and opportunities. Subject to separate written agreement between the Foundation and the District, the Foundation may hold licensing agreements and other forms of intellectual property, borrow or guarantee debt issued by or for the District, or engage in other activities to increase revenue and/or the financial wherewithal of the Foundation or the District.

9. Compliance with Donor Restrictions on Gifts and Relevant Laws.

- a. The Foundation will establish and implement a system of controls that ensure compliance with restrictions placed by a donor on a gift, applicable laws and regulations, specifically including the Texas Uniform Prudent Management of Institutional Funds Act (Chapter 163 of the Texas Property Code, as may be amended), and state and federal laws regarding the Foundation's non-profit, tax-exempt status.

- b. The Foundation will keep in full force and effect its exemption and status under Section 501(c)(3) under the Internal Revenue Code and will take no action which would cause this exemption to be revoked or limited.
 - c. The Foundation's Board of Directors will exercise due care in the management of the Foundation's affairs, including:
 - i. The preparation, distribution and reporting of annual and financial reports, if any, necessary to ensure compliance with the Texas Trust Code and Chapter 22 of the Texas Business Organizations Code; and
 - ii. The conduct of an annual audit by an independent professional auditor, a copy of which shall be provided to the District through the Executive Director.
 - d. Funds and resources collected by the Foundation not applied to operating expenses and funds and resources transferred to the Foundation by the District shall be held and invested pursuant to a legally appropriate, written investment policy, which the Foundation has previously established, and as may be amended from time to time.
10. Use of Foundation Earnings or Assets.
- a. The Foundation will not provide any form of financial compensation regardless of how titled to any District officer or employee without the prior written approval of the District Board of Trustees or its authorized designee and the Foundation Board of Directors; provided, that the Foundation may reimburse its representatives or agents for reasonable and necessary expenses incurred for or in the business of the Foundation.
 - b. Under no circumstances shall any of the earnings or assets of the Foundation inure to or be distributed to the benefit of its directors, officers, or other private persons, except that the Foundation is authorized to pay reasonable compensation for services rendered by individuals or entities (except for District officers or employees as provided in Paragraph 10.a., above) and to make payments and distributions in furtherance of the overall purposes of the Foundation, including reimbursements of reasonable expenses of Foundation's officers in accordance with law, award and payment of scholarships and related educational grants or awards.
 - c. The Foundation may, by mutual agreement with the District, reimburse the District for its operating expenses. Any such reimbursement shall be reasonable, properly substantiated by the District and shall require the prior approval of the Foundation's Board of Directors.

- d. The Foundation has the right to use a reasonable percentage of the annual unrestricted funds, assess fees for services, or impose gift levies to support the Foundation's operations. Gift levies are administrative costs taken from certain gifts to administer the gift.

11. Transfer of Donations or other funds Received by District.

- a. The District may transfer unrestricted gifts made to the District to the Foundation, which, if transferred, shall be used in furtherance of District's public purposes, and annual reports documenting such use shall be provided to the District.
- b. The District may transfer restricted gifts to the Foundation if any of the following criteria apply:
 - i. the funds retain the restrictive use originally assigned by a donor, unless modified according to applicable law;
 - ii. the retention of the funds by the District would substantially impair the intended use of the funds and/or would constitute an unreasonable administrative burden on the District such that the donor's intentions would be unrealized or unreasonably thwarted or inhibited; or
 - iii. the District has been permitted by a court of competent jurisdiction to so transfer the funds, if such permission is required by applicable law.
- c. Management of Funds on Behalf of District. The District may, as permitted by law, transfer or assign to the Foundation, oversight and management responsibility of other funds or interests owned or held by the District, including but not limited to royalty or other mineral interest revenues. The District and the Foundation acknowledge that separate management agreements may be executed if and when appropriate upon the transfer of such fund management responsibilities.

12. Fundraising Activities. The Foundation will conduct fundraising and resource raising campaigns, drives and efforts on behalf of the District. The activities and events may be reviewed with the District's Chancellor prior to implementation of activities in accordance with District policy and regulation. The District will take reasonable steps to obtain Foundation's prior approval of any use of the Foundation's name, sales tax-exemption number, or tax identification number in any fundraising, event materials or other communication, and the Foundation's approval will not be unreasonably withheld or delayed.

13. Protection of Student Confidentiality Rights. The Foundation understands that it may be provided information regarding students for consideration of financial support that is legally protected from disclosure under law, including the Family Educational Rights and

Privacy Act, 20 U.S.C. § 2032g, and agrees to take steps to ensure that such information is provided only to persons within the Foundation with legitimate educational interests only.

14. Provision of Director's and Officer's Liability Insurance. The Foundation will secure and retain director's and officer's liability insurance to provide insurance coverage for the acts or omissions of the Foundation's Board of Directors and officers. The Foundation may secure and retain other forms of insurance applicable to the Foundation's obligations hereunder. The Foundation shall determine the amount or scope of all applicable insurance coverage as the Foundation deems appropriate in its sole discretion.

IV. MUTUAL RESPONSIBILITIES

15. Responsibility for Activities and Liabilities. The District and the Foundation agree that at all times each party is responsible for its own activities and liabilities and that neither party is authorized to seek payments or indemnification from the other for claims arising from the activities undertaken pursuant to this 2019 MOU. With the exception of responsibilities specifically undertaken pursuant to this 2019 MOU, each party shall be solely responsible for defending, and paying any damages arising from its activities or from any and all claims and damages arising from the actions for which it has accepted responsibility. The terms of this 2019 MOU do not constitute a waiver of any immunity to which either party may be entitled as a matter of law.

16. Civil Rights Responsibilities. The District and the Foundation will each take appropriate steps to ensure that it does not discriminate in any of its benefits, programs or activities against any person because of race, religion, national origin, color, gender, national origin, sex (including sexual orientation), veteran's status or age, or any other class protected by applicable law. The District and the Foundation are each responsible to have in place a complaint, investigation and resolution process that meets or exceeds any requirements established by state and federal law and that it will take prompt steps to remedy any discrimination that is identified. The parties are to cooperate in any investigation conducted by the other regarding allegations of discrimination or disparate treatment.

V. NOTICES

17. Unless either party is otherwise notified in writing by the other party, all notice and communications under this 2019 MOU shall be mailed or delivered to:

Chancellor
Tarrant County College District
1500 Houston Street
Fort Worth, TX 76102

President, Board of Trustees
Tarrant County College District
1500 Houston Street
Fort Worth, TX 76102

Executive Director
Tarrant County College Foundation
1500 Houston Street
Fort Worth, TX 76102

Chairman, Board of Directors
Tarrant County College Foundation
1500 Houston Street
Fort Worth, TX 76102

VI.

TERM OF MEMORANDUM AND TERMINATION

18. The term of this 2019 MOU begins on its effective date and shall continue indefinitely, unless amended in written form and executed by each party.
19. This 2019 MOU shall be terminated in the following manner during the term:
- a. If the Foundation is treated as a private foundation as a result of Section 509(a) of the Internal Revenue Code, upon the written notice provided by the District;
 - b. If the District ceases to be an organization described under Section 509(a)(1) or Section 509(a)(2) of the Internal Revenue Code or if the District is dissolved or otherwise ceases to exist, this 2019 MOU shall be terminated upon the written notice of either party;
 - c. Immediately by the District for fraudulent or otherwise criminal conduct by the Foundation Board of Directors upon provision of written notice with documentation supporting the allegations of improper conduct. If the 2019 MOU is terminated under these circumstances, the Foundation is prohibited from using the District's name to solicit donations or for any other purpose and shall not represent in any way to alumni, contributors or the general public that the Foundation is affiliated with the District or any of its components parts; or
 - d. Upon thirty (30) days written notice provided by either party to the other of an intention to terminate the terms of this 2019 MOU with or without cause.

VII.

MISCELLANEOUS PROVISIONS

20. Choice of Law and Venue. This 2019 MOU is made and will be performed in the State of Texas and shall be construed in accordance with the laws of the State of Texas. The parties agree that this 2019 MOU is enforceable in Tarrant County, Texas. If legal action is necessary to enforce it, exclusive venue will lie in Tarrant County, Texas.

21. Waiver. No waiver of any right or remedy on one occasion by either party shall constitute a subsequent waiver of such right or remedy on any other occasion.

22. Assignment. This 2019 MOU is not assignable by either party, in whole or in part, unless otherwise agreed by the parties in a separate writing duly authorized and executed.

23. Severability. If any provision of this 2019 MOU is held invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired.

24. Relationship Between the Parties. Neither party has the right nor authority to, and shall not assume or create any obligations of any nature on behalf of the other party, or bind the other party in any respect. The District and the Foundation agree that at all times and for all purposes in the performance of this 2019 MOU each is acting in an independent capacity and not as the agent or representative of the other.

25. Headings. The headings provided in this 2019 MOU are for convenience only and will not be used in interpreting or construing this 2019 MOU.

26. Modification of 2019 MOU. This 2019 MOU may only be modified by a written document executed by the parties. Copies of this 2019 MOU, including any facsimile copies or .pdf file copies with signatures, shall be treated as an original. The parties expect to review and, if appropriate, jointly amend this 2019 MOU as deemed appropriate by the parties.

27. Legal Effect. The parties agree that this 2019 MOU is not intended to be and does not constitute a contract and therefore the obligations of the parties as set forth herein are merely statements of intent and do not provide either party with legal remedies associated with or related to a breach of contract. Rather, this 2019 MOU is intended to lay out the processes to further the cooperation between the District and the Foundation. Accordingly, each party does hereby waive all claims, demands, causes of action, damages, losses or other legal remedies, in law or equity, it may have against the other party (and its successors, employees, trustees, and agents) that arise out of or are in any manner connected with this 2019 MOU; provided however, this waiver shall not extend to obligations or claims of either party that would otherwise exist at common law, in any separate agreements, or otherwise outside of the terms of this 2019 MOU.

28. 2009 MOU Replaced. The 2009 MOU is hereby superseded and fully replaced by this 2019 MOU as of the effective date of this 2019 MOU.

IN WITNESS WHEREOF, the parties hereto have executed this 2019 MOU in one or more counterparts, signed by and through their duly authorized agents, thereby binding

themselves, their successors and assigns and representatives for the faithful and full performance of this 2019 MOU.

[Signature page following]

TARRANT COUNTY
COLLEGE DISTRICT

By: _____
President, Board of Trustees

Date: _____

By: _____
Chancellor

Date: _____

TARRANT COUNTY COLLEGE
FOUNDATION

By: _____
Chairman, Board of Directors

Date: _____

By: _____
Executive Director

Date: _____