

MEMORANDUM OF UNDERSTANDING
between the
Kentucky Community and Technical College System
and the
Kentucky Community and Technical College System Foundation

This Memorandum of Understanding (the "Memorandum") is made and entered into this 9th day of August, 1999, by and between the Kentucky Community and Technical College System Foundation, with an address of P.O. Box 14092, Lexington, KY 40512 (hereinafter "Foundation"); and the Kentucky Community and Technical College System, a governmental agency of the Commonwealth of Kentucky and an educational institution, with an address of 2624 Administration Park Drive, Lexington, Kentucky 40512 (hereinafter "KCTCS").

W I T N E S S E T H:

WHEREAS, the Kentucky Community and Technical College System was created to improve the quality of life and employability of Kentucky citizens through a comprehensive community and technical college system of postsecondary education programs, training, and services that will be recognized as the nation's best by the year 2020; and

WHEREAS, the support of the private sector is instrumental in achieving the vision, mission, and goals of the Kentucky Community and Technical College System; and

WHEREAS, the creation of the Kentucky Community and Technical College System Foundation will assist KCTCS and its colleges in attracting the support of individuals, corporations, foundations, and organizations who desire to advance the vision, mission, and goals of the Kentucky Community and Technical College System through voluntary efforts and philanthropic financial support; and

WHEREAS, the activities of the Foundation will advance the purposes of fundraising, advocacy, public relations, and the educational and community service goals of KCTCS to benefit the students, faculty, staff, and the communities served by KCTCS; and

WHEREAS, the Foundation qualifies for recognition as the official fund-raising arm of the Kentucky Community and Technical College System pursuant to the Policy for the Recognition of Independent Foundations adopted by the KCTCS Board of Regents on June 18, 1999 (the "Policy"); and

WHEREAS, KCTCS desires to assist the Foundation in the management and supervision of its activities by providing the Foundation access to certain employees and resources of KCTCS; and

WHEREAS, because of the close association of the Foundation with KCTCS, it is prudent and beneficial to have a clear statement, agreed upon by the parties, of the responsibilities, authority, and the relationship of KCTCS and its recognized Foundation;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt, mutuality and sufficiency all of which is hereby acknowledged by the parties hereto, the Foundation and KCTCS each agree as follows:

Section 1. Obligations of the Foundation.

- a.** The Foundation shall actively cooperate and assist KCTCS in the implementation of private-sector fundraising appeals, campaigns, and events, public awareness activities, and advocacy efforts that enhance the mission, goals, and objectives of KCTCS.
- b.** The Foundation shall solicit, receive, hold and invest funds, administer property, and make expenditures to support the programs, activities, and needs of KCTCS. The Foundation may not engage in activities contrary to this objective. In addition, the acts, deeds, functions, and activities of the Foundation shall in no way conflict with the authority of KCTCS. Nor shall the Foundation solicit or accept gifts for any use specified by a donor that is inconsistent with the mission, goals, and objectives of KCTCS.
- c.** The Foundation agrees to abide by the Policy for the Recognition of Independent Foundations and any other applicable policies and guidelines of KCTCS as they may, from time to time, be adopted and amended. A copy of the presently effective Policy is attached and is incorporated herein by reference.
- d.** The books and records of the Foundation shall be kept in accordance with generally accepted accounting principles and shall be audited annually in accordance with generally accepted auditing standards by an independent professional auditor who shall furnish to KCTCS copies of the annual audit. Any audit findings, audit exceptions, or any misuse of funds shall be reported to the Foundation Board of Directors who shall maintain a written policy regarding the handling and resolution of such occurrences. A copy of this policy shall be provided to KCTCS. The Foundation shall take appropriate corrective action to remedy such occurrences.
- e.** The Foundation agrees to transfer restricted funds, both current gifts and income from endowments, to KCTCS in an expeditious manner when requested by KCTCS for expenditure in accordance with the terms and conditions applicable to the particular funds.

- f. The Foundation shall indemnify and hold harmless KCTCS from and against any liability, losses, claims, demands, costs, and expenses, including without limitation attorneys' fees and litigation expenses, arising out of any personal injury or property damage arising in connection with the activities of the Foundation.
- g. The Foundation, at its sole expense, shall maintain or provide adequate insurance in such forms and sums as the Foundation and the KCTCS agree are necessary.
- h. In the case that the Foundation is acting as a depository for public funds, said funds shall be audited annually by an independent professional auditor in accordance with generally accepted auditing standards and other agreed upon procedures, if any, as required by KCTCS. The professional auditor shall furnish KCTCS copies of the annual audit. All audit findings or exceptions involving public funds or the misuse of public funds shall be reported without delay to the KCTCS Board of Regents for appropriate action. The KCTCS Board of Regents may require specific corrective action as it deems necessary in order to protect the integrity of public funds held by the Foundation. KCTCS may also require the return of some or all public funds on deposit with the Foundation.
- i. The Foundation shall reimburse KCTCS for any reasonable expenditures made by KCTCS for the benefit of the Foundation.

Section 2. Obligations of KCTCS.

- a. KCTCS recognizes the Foundation as separate, independent, and private in accordance with the Policy and agrees that the Foundation's continued status as a recognized Foundation under the Policy shall continue as long as the Foundation complies with the requirements of the Policy and other applicable policies and guidelines of the KCTCS as they may, from time to time, be adopted and amended.
- b. The President of KCTCS will present to the Foundation on an annual basis a list of private funding priorities for which the Foundation will seek funds and a budget for the use of any portion of unrestricted funds which may be available for allocation to KCTCS.
- c. KCTCS and the Foundation agree that all funds received will be expended in accordance with the respective KCTCS and Foundation policies, be supported by vouchers required by such policies, and in adherence with the general charitable purposes of the Foundation and in conformance with any restrictions imposed by the donor or the Foundation as to the use or purpose of the specific funds.

- d. The President of KCTCS shall assign the necessary duties and functions to appropriate KCTCS staff members in connection with this Memorandum. KCTCS acknowledges that certain of its employees may, from time to time, also serve as members of the Foundation, and in such capacity are obliged to perform the duties of such positions subject to the direction and control of the Foundation and its governing board, and not subject to the direction and control of KCTCS. KCTCS agrees further that they will not instruct or in any way require their employees who serve as officers or members of the Foundation to take any action with respect to their duties as members, and will permit such employees to exercise their own independent judgment.
- e. During the term of recognition, the Foundation shall be authorized to use the facilities, equipment, personnel, and services of the KCTCS in order to carry out its activities in support of KCTCS, subject to the prior approval of the KCTCS President. The KCTCS Office of Institutional Advancement or an office that performs similar duties as designated by the KCTCS President shall serve as the principal office for the KCTCS Foundation.
- f. During the term of recognition as established by the Guidelines, donors to the Foundation shall be acknowledged and recognized in the same manner and afforded the same privileges as donors to KCTCS.

Section 3. Mutuality of Obligations.

- a. The parties agree that the obligations imposed upon the parties are for the benefits of the parties and that the timely fulfillment of each and every obligation in accordance with this Memorandum is necessary. The failure of any party to fulfill its obligations under this Memorandum or the failure of any event to occur by a date established by this Memorandum shall constitute a breach of this Memorandum unless the fulfillment of such obligation is waived or modified by written agreement of the parties.
- b. Except as may otherwise be provided herein, the parties to this Memorandum shall be solely responsible for any cost incurred in fulfilling their obligations under this Memorandum and no party shall have any claim against the other party for reimbursement of such cost whether or not a party is in default.

Section 4. Term of Memorandum.

- a. This Memorandum shall be effective as of the date first written above and shall terminate on the 30th day of June, 2000.

- b. This Memorandum shall automatically renew for ten (10) additional terms of one (1) year each unless either party terminates this Memorandum by written notice thirty (30) days prior to the expiration of the current term.
- c. This Agreement may be terminated by either party for cause if not cured within thirty (30) days of receipt of written notice.

Section 5. Miscellaneous Provisions.

- a. This Memorandum may be signed by each party upon a separate copy, and in such case one counterpart of this Memorandum shall consist of a sufficient number of such copies to reflect the signature of each party hereto. This Memorandum may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Memorandum or the terms and conditions hereof to produce or account for more than one of such counterparts.
- b. The headings set forth in this Memorandum are for convenience or reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Memorandum.
- c. The terms and conditions of this Memorandum shall be binding upon and shall inure to the benefit of the successor and assigns, respectively, of the parties. This provision shall not be construed to permit assignment by any party of its rights and duties under this Memorandum, which assignment shall be prohibited except with the prior written consent of all parties hereto.
- d. This Memorandum sets forth the entire understanding of the parties with respect to the subject matter hereof, supersedes all existing agreements among them concerning the subject matter hereof, and may be modified only by a written instrument duly executed by each of the parties hereto.
- e. Time is of the essence in the performance of each of the terms and conditions of this Memorandum.
- f. The parties agree that any suit, action or proceeding with respect to this Memorandum may only be brought in or entered by, as the case may be, the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky; or the United States District Court for the Eastern District of Kentucky, Frankfort Division.
- g. All notices, requests, demands, waivers and other communications given as provided in this Memorandum shall be in writing, and shall be addressed as follows:

If to the Foundation: KCTCS Foundation
P.O. Box 14092
Lexington, Kentucky 40512
Attn: Timothy R. Burcham, CFRE
Senior Executive Assistant to the President
for Institutional Advancement

If to KCTCS: Kentucky Community and Technical College System
P.O. Box 14092
Lexington, KY 40511
Attn: Beverly Haverstock
Office of Legal Counsel

- h.** KCTCS may audit or review all documentation and records of the Foundation relating to its activities in connection with the KCTCS pursuant to the provisions of KRS 45A.150.
- i.** The parties agree that this Memorandum of Understanding is not entered into under the provisions of KRS 56.8161 et seq.

IN WITNESS WHEREOF, the Foundation and College have executed this Memorandum as of the date first above written.

KCTCS FOUNDATION:

Chair

**KENTUCKY COMMUNITY AND
TECHNICAL COLLEGE SYSTEM:**

Examined as to Form and Legality Only

KCTCS Legal Counsel

By: _____
Dr. Michael B. McCall, President