

Memorandum of Understanding
Between the
Board of Trustees of College of DuPage
and the
College of DuPage Foundation

THIS MEMORANDUM OF UNDERSTANDING, hereinafter known as the ("Agreement") is, entered into as of the 22nd day of June, 2009 (the "Effective Date"), between the Board of Trustees of College of DuPage, a body politic and corporate of College of DuPage, (hereinafter called the "College") and College of DuPage Foundation, an Illinois not-for-profit corporation, (hereinafter called the "Foundation").

Preamble

WHEREAS, the Foundation was established as a separate, not-for-profit corporate entity and exists for the principal purpose of advancing and furthering the aims and purposes of the College and is a private corporation 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, the Foundation is dedicated to addressing, through building an endowment, the long-term academic and other institutional priorities of the College; and

WHEREAS, the Foundation is an organization described in Internal Revenue Code section 501(c)(3) and is classified as a publicly supported organization under Internal Revenue Code sections 509(a)(1) and 170(b)(1)(A)(iv); and

WHEREAS, the Foundation assists the College in generating private support and manages, invests, and administers private gifts and resources, including endowments, real property, and funds held for others, and acknowledging and stewarding gifts in accordance with donor intent and its fiduciary responsibilities; and

WHEREAS, the College desires the Foundation to continue its assistance to the College, including its fund-raising services directed toward expanding and enhancing the educational, research and service goals and capabilities of the College, and further desires to make available to the Foundation support towards meeting these objectives and will provide certain limited support to the Foundation to further both the College's and Foundation's purposes; and

WHEREAS, the College desires to set forth the basic terms of its relationship with the Foundation, in order to make clear the support the Foundation provides to the College; and

WHEREAS, the parties desire that the recitations hereinabove set forth in this preamble be adopted by reference and incorporated into the Memorandum of Understanding, the same as though set forth in full context.

NOW, THEREFORE, in consideration of the foregoing premises and the terms and conditions hereinafter provided, the parties agree as follows:

ARTICLE 1

Foundation's Responsibilities and Relationship to the College

The Foundation agrees:

- A. To receive, hold and administer gifts of property, real or personal, financial or otherwise, to be used for and on behalf of the College, its faculty, students, and staff, all according to the terms of any applicable gift agreement or other restrictions. In the event the donor does not specify the terms or all the terms for which the gift shall be used, then the Foundation shall administer and use the gift for the benefit of the College according to the College's needs and policies.
- B. To hold, manage and distribute such assets in its possession for the dedicated purpose of supporting the mission of the College and, as the primary depository of private gifts on behalf of the College, to transfer funds to the designated department within the College in compliance with applicable laws, College and Foundation policies, and gift agreements.
- C. To plan, direct and implement all phases of private sector fundraising efforts including special events, direct mail appeals, major and planned gift solicitations and corporate and foundation grants and to conduct such other fund-raising campaigns as may be deemed necessary and desirable by the Foundation.
- D. To identify, cultivate, evaluate and solicit, active and prospective donors and contributors for the benefit of the College, in conjunction with the College President and to secure for the benefit of the College's students, faculty, and programs, private monetary resources in the continuing quest for overall excellence.
- E. To continue to promote the College's best interests, when requested, within the region, state and nation and, when asked, to advise and counsel the various components of the College.
- F. To keep complete, accurate and confidential financial records of donors and donor funds, establish and enforce policies to protect donor confidentiality and privacy and provide access to data and records on a need-to-know basis in accordance with applicable laws and the Foundation's policies and guidelines.
- G. To provide appropriate stewardship, recognition and acknowledgment to donors through timely correspondence, gift clubs and recognition events.
- H. To adhere to applicable federal and state laws including the Uniform Prudent Investor Act and the Uniform Management of Institutional Funds Act or Uniform Prudent Management of Institutional Funds Act.
- I. To engage an independent accounting firm annually to conduct an audit of financial and operational records of the Foundation and provide the College with a copy of the audit and work with the College to ensure that the College can correctly report Foundation resources and activities as may be required for the financial statements of the College.

- J. To develop gift acceptance guidelines and policies in accordance with the College's mission, goals and objectives.
- K. To provide seed grants for new program development for various departments of the College for the purpose of securing and stewarding institutional relationships and partnerships.
- L. To provide scholarships to the students and staff of the College.
- M. To maintain and manage an endowment, including establishing fund agreements with donors to the endowment and setting and implementing investment and distribution policies and procedures that will prudently steward the principal of the endowment and honor donor intent, as prescribed by the Uniform Prudent Investor Act, the Uniform Management of Institutional Funds Act or Uniform Prudent Management of Institutional Funds Act and other applicable Illinois law.
- N. To receive, hold, manage, invest, and disperse contributions of cash, securities, patents, copyrights, and other forms of property including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred gift instruments and disposition or allocation of real estate or other forms of tangible property.
- O. To permit the College President to serve as an *ex-officio* member of the Foundation Board and its Executive Committee.
- P. To pay or reimburse the College President for expenses related to fundraising activities and otherwise advancing the College/Foundation upon receipt of such documentation as is required under applicable College and Foundation policies.
- Q. To disclose any terms, conditions, or limitations imposed by the donor or legal determination on any gift transferred or distributed to the College.

ARTICLE II

College's Responsibilities and Relationship to the Foundation

The College agrees :

- A. To provide the Foundation with appropriately furnished and equipped space.
- B. To pay for the Foundation's expenses for printing and promotional materials in connection with the fund-raising activities of the Foundation.
- C. To assist with such marketing services, as is necessary, for the Foundation to accomplish its goals. Such assistance includes:
 - Development of print and promotional materials; and
 - Authorization to use the College name, logo and marketing brand.
- D. To assist in the strategic aspects promoting donor investment.

- E. To provide, to the extent possible, information technology support including software and hardware necessary to the Foundation to carry out its functions.
- F. To contribute funds, to the extent possible, to help pay the salaries of Foundation personnel.
- G. To have the President of the College recommend to the College's Board of Trustees, after consultation with the Foundation's Board of Trustees, a person to serve as Executive Director of the Foundation.
- H. To consider the recommendations of the Executive Director regarding staffing requirements of the Foundation.
- I. To support the operations of the Foundation by assigning, at the College's discretion, College personnel to assist the Foundation.
- J. To provide accurate accounting for scholarship awards and for any expenses that will be paid from Foundation resources subject to prior approval of the Executive Director of the Foundation.
- K. To create and enforce College policies, where deemed necessary and appropriate, that support the Foundation's ability to respect the privacy and confidentiality of donor records and to recognize that the Foundation is a private corporation with the authority and obligations to keep all records and data confidential consistent with the requirements of law.
- L. To communicate, through the College President, institutional priorities and long-term plans as approved by the Board of Trustees and the leadership to the Foundation and to include the Foundation as an active and prominent participant in the strategic planning for the College.
- M. To have the College President's duties include assuming a prominent role in the Foundation's fund-raising activities.
- N. To acknowledge the Foundation as a separate entity from the College with expertise in coordinating and in implementing all aspects of a resource development department and in maintaining a comprehensive, growing fund-raising program.
- O. To honor the terms, conditions, or limitations imposed by donor or legal determination on any gifts transferred from the Foundation.

ARTICLE III

Term, Termination and Amendments

- A. The term of this Memorandum of Understanding shall be five years from the Effective Date and shall continue thereafter from year to year unless either party shall give to the other written notice of termination as provided below.
- B. Either party may, upon 90 days prior written notice to the other, terminate this Memorandum of Understanding without cause.

- C. Either party may terminate this Memorandum of Understanding for cause in the event the other party defaults in the performance of its obligations and fails to cure the default within a reasonable time period after receiving written notice of such default.
- D. This Agreement contract may not be assigned without prior written consent of the parties.
- E. Specific projects or activities not already covered by this Memorandum of Understanding may be agreed upon between the parties in writing as an amendment hereto, which shall constitute a portion of this Memorandum as though originally contained herein.
- F. Should the Foundation cease to exist or cease to be an organization described in Internal Revenue Code section 501(c)(3), the Foundation will transfer its assets and property to or among the College or any one or more foundations affiliated with the College that are organized and operated exclusively for charitable and educational purposes within the meaning of Internal Revenue Code sections 501(c)(3) and 170(c)(2)(B). If none of the College or its affiliated foundations are then so described, the Foundation will distribute its assets and property to one or more organizations that are organized and operated exclusively for charitable and educational purposes within the meaning of Internal Revenue Code sections 501(c)(3) and 170(c)(2)(B). The Foundation agrees to transfer such assets and property in a manner that furthers the best interests of the College, as determined in consultation with the College.
- G. This Memorandum of Understanding may be amended only upon the written agreement of the College and the Foundation.

ARTICLE IV

Background of the Parties

The Foundation and the College have two separate and different systems for selection of their leadership and governance.

- A. The College is governed by The College Board of Trustees which is composed of elected individuals who represent the voters of the District and one student representative, who has an advisory vote, elected by the student body for a one-year term. The College Board of Trustees is responsible for overseeing the mission, leadership, and operations of the College. The College Board of Trustees is responsible for setting priorities and long term plans for the College and legally accountable for the performance and oversight of all aspects of the College. The College Board of Trustees is responsible for the employment, compensation and evaluation of the President of the College.
- B. The Foundation is a separately incorporated Illinois not-for-profit corporation governed by its Board of Trustees. The Foundation's Board of Trustees 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 Board of Trustees is responsible for the performance and oversight

of all aspects of its operations based on a comprehensive set of Bylaws that clearly address the Board's fiduciary responsibilities, including expectations of all individual Board members to comply with ethical guidelines and policies.

ARTICLE V

General Terms

- A. To ensure effective achievement of the terms of this Memorandum of Understanding, the College's officers and Board of Trustees and the Foundation's officers and Board of Trustees are encouraged to hold periodic meetings to foster and maintain productive relationships and ensure open and continuing communications and alignment of priorities.
- B. Nothing contained herein shall be deemed to prevent the College from entering into agreements with other entities or related foundations with obligations and purposes similar to those expressed in the Memorandum of Understanding.
- C. The College and the Foundation acknowledge that each is an independent entity and agree that neither will be liable, nor will be held out by the other as liable, for any of the other's contracts, torts, or other acts or omissions, or those of the other's trustees, directors, officers, staff, or other agents.
- D. All correspondence, solicitations, activities, and advertisements concerning the Foundation shall reflect the Foundation, the College, and the relationship between them appropriately.
- E. The College shall be permitted to audit the financial records of the Foundation, but shall not be permitted to audit donor records.
- F. No provision of this Memorandum of Understanding shall be deemed to create a partnership or joint venture between the College and the Foundation.

IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed by their duly authorized representatives as of the day and year first above written.

ATTEST:

**Board of Trustees of
College of DuPage**

By: _____
Chair

By: _____
College President

By: _____
Secretary

ATTEST:

**Board of Trustees of
College of DuPage Foundation**

By: _____
President

By: _____
Executive Director