

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into as of this the 23rd day of May 2018, by and between the **HOUSTON CITY COLLEGE** (the “College”) and the **HOUSTON CITY COLLEGE FOUNDATION** (the “Foundation”).

The Foundation was organized and incorporated in the State of Texas for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, Foundations, and others for the benefit of the College.

The Foundation exists to raise and manage private resources supporting the mission and priorities of the College and to provide opportunities for students and a margin of institutional excellence unavailable with state funds. To this end, the Foundation will coordinate with the College Chancellor to ensure that its mission complements the College’s mission and strategic plan.

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

As stated in its articles of incorporation, the Foundation is classified as a Section 509(a)(1) and 170(b)(1)(A)(vi) publicly supported charity 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:

A. Foundation Name, Seal and Logotype

Consistent with its mission to help to advance the plans and objectives of the College, the Foundation is granted the use of the name, Houston City College. However, the Foundation will closely coordinate the use of its own seal and/or logotype with the College and shall not use the College seal or other identifying marks in the promotion of its business and activities, unless otherwise approved by the Chancellor or designee.

B. College Governance

1. The Board of Trustees of the College is responsible for overseeing the mission, leadership, and operations of the College.
2. The Board of Trustees is responsible for setting priorities and long-term plans for the College.
3. The Board of Trustees is legally responsible for the performance and oversight of all aspects of College operations.

4. The Board of Trustees is responsible for the employment, compensation, and evaluation of all College employees, including the Chancellor.
5. The Board of Trustees is responsible for appointing two non-voting ex officio board members to the HCC Foundation Board of Directors. The ex officio members will serve one year terms and will be appointed each January when the Board of Trustees elects its officers.

C. The Foundation’s Relationship to the College

1. The Foundation is classified as a Section 509(a)(1) and 170(b)(1)(A)(vi) publicly supported charity created to raise, manage, distribute, and steward private resources to support the various missions of the College.
2. 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.
3. The Foundation 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 individual board members based upon ethical guidelines and policies.

D. The College’s Relationship to the Foundation

1. The College Chancellor or designee is responsible for communicating College priorities and long-term plans, as approved by the College Board of Trustees, to the Foundation. The Foundation will only raise funds for projects that have been designated by the College as proper fund-raising goals.
2. The College recognizes that the Foundation (including the Association) is a private corporation with the authority to keep all records and data confidential as a private entity. Neither the Foundation nor the Association is intended to be a “governmental body” under the Texas Public Information Act. The College agrees that this confidential information, which from time to time is shared with HCC personnel, still remains the sole and exclusive proprietary property of the Foundation, is a trade secret of the Foundation, and is protected from public disclosure unless otherwise mandated by state or federal law. Preserving the confidentiality of the Foundation’s information is paramount to effectiveness of the Foundation in carrying out its purposes. Disclosure could irreparably damage the Foundation’s relationship with past and current donors and negatively impact the ability to develop new donors. Therefore, the Foundation’s consent to treat any of the Foundation’s information that

may be disclosed to the College as a public record is specifically denied, except as otherwise provided herein. All Foundation information that is from time to time

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disclosed to the College, its trustees, employees or other agents or representatives shall be returned to the Foundation upon the sooner of the completion of the College's use thereof or the Foundation's request, and upon such return any copies of such information that may have been made shall be either destroyed or returned. Notwithstanding the above, both parties agree to comply with the Texas Public Information Act to the extent applicable (which the Foundation specifically denies as stated above), and both parties agree to comply with a public information ruling issued by the Texas Attorney General, subject to each party's specific right to challenge and/or appeal any such ruling in a court of law as allowed by Texas law.

3. The employee serving in the Executive Director position to the Foundation shall be included as a member of the College Chancellor's senior executive team.
4. The College shall include the Foundation as an active and prominent participant in the strategic planning for the College.
5. The College Chancellor or designee shall serve as an ex-officio member of the Foundation board and shall assume a prominent role in fund-raising activities.
6. The College agrees that, during the term of the [MOU], the College will, in cooperation with the Foundation, determine a reasonable sum of reimbursement to be paid by the Foundation to the College to reasonably cover the estimated percentage of the time College personnel, if any, spent on Foundation business, including other in-kind services or expenses provided by the College such as travel, marketing and advertising, and general supplies, but also considering the reasonably identifiable amount of funds benefitting the College that are raised or otherwise obtained directly or indirectly through Foundation activities. Such funds flowing back and forth between the College and the Foundation will be specifically identified to the extent feasible and agreed upon to serve as adequate *quid pro quo* reimbursement.
7. The Foundation recognizes restrictions on funds provided by the College and the Foundation's handling of such funds will be consistent with the fiscal practices established by the College. The employee serving in the Executive Director position and other HCC staff dedicated to the Foundation will abide by HCC Policies. Notwithstanding the fiscal practices of the College, the College and Foundation agree that it is acceptable for the Foundation to deposit donated funds into Foundation accounts when sufficient support exists to indicate the funds were intended as a donation to the Foundation even if the instrument may mistakenly indicate that it is payable to HCC or similar name, provided however, that prior to the Foundation's deposit of such funds (and after deposit to the extent reasonably available for review), a designated College representative shall review any instrument and/or other documents related to such donated funds and the Foundation shall honor such request. In addition, upon request, the Foundation will provide an accounting of such funds to the College.

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8. The College shall establish and enforce policies that support the Foundation's ability to respect the privacy and confidentiality of donor records.
9. The Chancellor of the College will be a member of the Foundation's Executive Committee.
10. Gift acceptance policies, procedures and/or guidelines of the Foundation remain the sole authority of the Foundation. However, the College Board of Trustees maintains its authority to establish criteria for, and ultimately to determine the, naming of any building, annex, library, auditorium, gymnasiums and other structures. The College Board of Trustees will give reasonable consideration in naming structures to Foundation donors upon the request of the Foundation.
11. The College will update and maintain the records of the HCC Alumni Association and provide constant access to such records to the Foundation.

E. Foundation Responsibilities

1. Fund-Raising

- a. The Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of the College.
- b. The Foundation, in consultation with the College Chancellor, is responsible for planning and executing comprehensive private fund-raising and donor-acquisition programs in support of the College's mission. These programs including annual giving, major gifts, planned gifts, special projects, and campaigns as appropriate.
- c. The Foundation will establish, operate in compliance with, and periodically assess its gift-management and acceptance policies. It will promptly acknowledge and issue receipts for all gifts on behalf of the Foundation and the College and provide appropriate recognition and stewardship of such gifts.
- d. The College recognizes that the Foundation bears major responsibility for private fund-raising. College representatives will coordinate private fund-raising initiatives including major gifts solicitations with the Foundation.
- e. The College Chancellor will work in conjunction with the leadership of the Foundation to identify, cultivate, and solicit prospects for private gifts.
- f. The Foundation on its own shall not accept grants from local, state or federal governmental agencies, except in special circumstances that are approved by the Foundation board of directors and the governmental agency.
- g. The Foundation shall establish and enforce policies to protect donor confidentiality and rights.

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- h. The Foundation may, with the support of HCC and consistent with its strategic fundraising program, enter into agreements and form enterprises which further the Foundation's goals and objectives, including the creation of other non-profit legal entities, or committees of the Foundation, including Affinity Groups, which are affiliated with and responsible to the Foundation. All third-party agreements and committees of the Foundation must be bound to the responsibilities and obligations of this Agreement; and comply with applicable HCC Foundation bylaws, policies and procedures, as well as applicable HCC policies and procedures, including but not limited to, the solicitation of gifts and donations, use of HCC resources, and engagement of HCC personnel. To the extent of any conflict, HCCS Foundation bylaws, policies and procedures shall govern.
2. Asset Management
- a. The Foundation will establish asset-allocation, disbursement, and spending policies that are consistent with applicable federal and state laws including the Uniform Prudent Investor Act (UPIA) and the Uniform Management of Institutional Funds Act (UMIFA).
 - b. The Foundation will 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.
 - c. The Foundation may engage in charitable fundraising projects and projects allowed by law on behalf of the College.
 - d. The Foundation will engage an independent accounting firm annually to conduct an audit of the Foundation's financial and operational records and will provide the College with a copy of the annual audited financial statements, including management letters. The Foundation will provide quarterly unaudited accounting reports to the College.
3. Institutional Flexibility
- a. The Foundation will be willing to explore future opportunities, including acquisition and management of real estate on behalf of the College for future allocation, transfer, or use.
 - b. When distributing gift funds to the College, the Foundation will disclose any terms, conditions, or limitations imposed by donor or legal determination on the gift. To the extent allowed by law, the College will abide by such restrictions and provide appropriate documentation.
4. Transfer of Funds

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- a. The Foundation is the primary depository of private gifts and will transfer funds to the designated entity within the College in compliance with applicable laws, College policies, and gift agreements.
- b. The Foundation's disbursements, on behalf of the College, must be reasonable business expenses that support the College, are consistent with donor intent, and do not conflict with the law.

F. Foundation Funding and Administration

1. The Foundation is responsible for establishing a financial plan to underwrite the cost of Foundation programs, operations, and services.
2. The Foundation has the right to use a reasonable, as determined by the Foundation Board, percentage of annual unrestricted funds, assess fees for services, or impose gift taxes, to support its operations.
3. The Foundation shall maintain copies of the plans, budgets, donor records, and records related to Affinity Groups developed in connection with the performance of its obligations, provided that the College will update, maintain and allow constant access to the Foundation of the records of the HCC Alumni Association.
4. The Foundation will provide copies of its annual report to the College. Access to any other Foundation data and records will be provided to the College on a need-to-know basis in accordance with applicable laws, Foundation policies, and guidelines.
5. The Foundation will operate consistently with HCC policies that are applicable to its work and the College shall be entitled to carry out assessments of compliance at any time it deems necessary.
6. The Foundation shall provide an IRS Form 990 and audited financial statements annually to the Chancellor or the Chancellor's designee. The audited financial statements will reflect the College's contributions to the Foundation and which shall be reviewed against the College's accounting records to ensure accuracy.
7. The Foundation shall maintain appropriate records of its revenues and expenditures and any other financial records as required by law and generally accepted accounting practices and shall make such records available to the College for inspection upon request by the Chancellor, or designee, upon five (5) business days' notice, or as the parties may mutually agree.
8. Any Foundation employees are not College employees. The Foundation shall be Solely responsible for reporting and payment of any income, social security, occupational, or any other state, federal, or local taxes owed as a result of its employment of Foundation personnel. Nothing in this MOU shall be construed to

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create any employment relationship between the College and any Foundation employee or otherwise entitle any Foundation employee to participate in any of the College's employee benefit plans or programs.

9. Foundation's employees have no authority to, and may not represent or otherwise hold themselves out as employees or agents of the College, and shall not enter into any agreement, contract, or obligation of any kind on behalf of the College. Nor will any Foundation employee have, or exercise the authority to, supervise or direct the activities of any College employee.

10. Except as otherwise expressly provided herein, any College employees who may from time to time provide services to the Foundation shall remain employees of the College and shall be subject to all policies, regulations and rules generally applicable to College employees.

11. The Chancellor shall appoint a College employee to serve in the role as the principal contact and as chief executive to the Foundation (referred to as the "Executive Director"). The Chancellor and the Foundation's Executive Committee shall collaborate to develop an appraisal instrument for the employee in the chief executive role. The Chancellor shall consider the Foundation's Executive Committee's recommended evaluation when conducting an annual performance evaluation of the employee. The Chancellor may immediately terminate the employment of the employee if the Chancellor determines the employee has engaged in serious misconduct or illegal behavior, or otherwise becomes ineligible for employment. In all other instances of termination of employment, the Chancellor will give the Foundation's Executive Committee and the employee at least sixty (60) days' prior written notice of the Chancellor's determination that the employee will be discharged.

12. Eligibility for Teacher Retirement System (TRS) benefits requires that staff employed pursuant to this MOU that provide assistance to the Foundation work for the College for one-half or more of the standard full-time work load (minimum 20 hours per week) at a rate comparable to the rate of compensation for other persons employed in similar positions in regular, full-time service eligible for TRS membership. The parties agree that the services provided by College staff that works with the Foundation are performed for the benefit of the College through its mission and purpose to further the interests of the College.

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13. The Foundation will lease office space under a separate lease agreement from the College on the terms and conditions agreed to therein.

G. Miscellaneous

1. This Memorandum of Understanding is intended to set forth policies and procedures that will contribute to the coordination of the parties' mutual activities and supersedes any prior Memorandum of Understanding entered into between the parties.
2. The Board of Trustees of the College agrees that the College shall continue to provide financial and other assistance to the Foundation, provided that the College's public educational purposes continue to be met and controls are in place. The Board reserves the right to discontinue the appropriation of funds in any budget year, provided however that the College will continue appropriations as reasonable and necessary to allow the winding down or transition of Foundation resources, including the disposition of existing endowments, for a period of time not to exceed nine (9) months from the time that the College provides written notice to the Foundation of the Board's decision to discontinue appropriating funds or otherwise providing resource assistance to the Foundation. Any resources the College agrees to contribute for support of the Foundation shall be within the sole discretion of the Board of Trustees of the College.
3. The Foundation shall ensure that during each fiscal year of its existence, it provides to the College (or for the benefit of the College) more revenue than the College provides to the Foundation, pursuant to this or any other agreement. If the Foundation fails to do so, the College reserves the right to reduce or cease funding or other support to the Foundation in the coming fiscal year, as provided above. For the purposes of this MOU, amounts contributed to the Foundation in any fiscal year shall include all Foundation programs or services to benefit the College grants made in a fiscal year, but shall not include money deposited in retained earnings until those retained earnings are spent for the benefit of the College.
4. To ensure effective achievement of the items of this MOU, the College and Foundation officers and board representatives shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.
5. This MOU shall continue in full force and effect until terminated by either party as stated herein. Either party may, upon 90 days' prior written notice to the other, terminate this MOU. Notwithstanding the foregoing, either party may terminate this MOU 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.

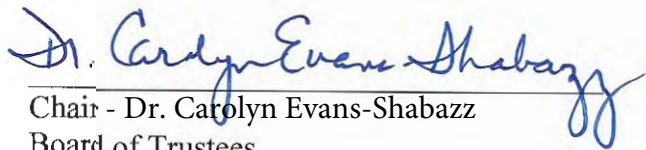
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6. Should the College choose to terminate this MOU, the Foundation may require the College to assume or to pay, within 180 days of prior written notice, all obligations incurred by the Foundation on the College's behalf including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. Should the Foundation choose to terminate this MOU, the College may require the Foundation to pay obligations of the Foundation in like manner.

7. Consistent with provisions appearing in the Foundation's bylaws and its articles of incorporation, should the Foundation cease to exist or cease to maintain its exempt status under the Internal Revenue Code, the Foundation will transfer its assets and property to the College, to a reincorporated successor foundation, or to the state or federal government for public purposes, in accordance with the law, donor intent and the endowment agreements. Upon such transfer, the College and/or successor entity will assume all fiduciary duties related to the assets and property.

IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed by their duly authorized officers effective on the date stated hereinabove.

AGREED:



Chair - Dr. Carolyn Evans-Shabazz
Board of Trustees
Houston City College

Date: 5-23-18

AGREED:



President - David Regenbaum
Board of Directors
Houston City College Foundation

Date: 5/23/18