

**STATE OF ALABAMA)
JEFFERSON COUNTY)**

**MEMORANDUM OF AGREEMENT BETWEEN
LAWSON STATE COMMUNITY COLLEGE AND
THE LAWSON STATE COMMUNITY COLLEGE FOUNDATION**

THIS MEMORANDUM OF AGREEMENT is entered into on this the 6th day of May, 2008, by and between Lawson State Community College (the "College"), a State of Alabama institution of postsecondary education, and The Lawson State Community College Foundation (the "Foundation"), an Alabama nonprofit corporation.

The Foundation was organized and incorporated in the State of Alabama in 1995 for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, foundations, and others for the benefit of the College and to assist and aid the College in fulfilling and performing its educational and public service programs and activities.

The Foundation exists to raise and manage private resources supporting the mission and priorities of the College, to provide opportunities for students and margin of institutional excellence not achievable with institutional funds alone, and to otherwise support and assist the College in its educational, economic development, and public service programs and activities in such manners as are permissible under §501 (c) (3) of the Internal Revenue Code of 1986, as amended, and as are permissible by applicable State law and applicable rules, regulations, and policies of the College and the State of Alabama Board of Education.

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

As stated in its Articles of Incorporation, the Foundation is a separately incorporated §501 (c) (3) corporation and is responsible for identifying and nurturing relationships with potential donors and friends of the College; soliciting cash, securities, real, personal, and intellectual property, and other private resources to support the College; and acknowledging and stewarding 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 hereto agree as follows:

Term of Agreement

Subject to earlier termination by law or as provided elsewhere herein below, this Agreement shall have a term of ten years, starting with the effective date stated herein above.

Foundation's Relationship to College

- The Foundation is a separately incorporated §501 (c) (3) nonprofit "supporting organization" created to raise, manage, distribute, and steward private resources to support the mission and purposes of the College and to support the College in any other manner permitted by §501 (c) (3) and by State law and the rules, regulations, and policies of the College and the State of Alabama Board of Education.
- The Foundation's 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 based upon a comprehensive set of by-laws that clearly addresses the Foundation Board of Directors' fiduciary responsibilities and avoidance of conflicts of interests and promotion of ethical behavior on the part of the Foundation's Directors, officers, and employees. The Foundation shall also comply with all applicable policies of the State of Alabama Board of Education and all applicable guidelines issued by the Chancellor of the Alabama Department of Postsecondary Education.
- Where Foundation funds are to be spent on College property, the prior written approval of the College President shall be secured, and the Foundation shall not financially obligate or encumber the College in any manner without the President's prior written consent. Capital construction funds on College property supported in whole or in part by Foundation funds shall comply with all applicable College, State Board of Education, and State of Alabama procedures and requirements governing such projects.
- The Foundation is responsible for the employment, compensation, and evaluation of all of its employees. In the event that any employee of the College shall provide any service to the Foundation, the employee of the College shall remain solely an employee of the College.
- The Foundation may earmark a portion of its unrestricted funds to a discretionary fund for the President of the College and will either transfer a percentage of those unrestricted funds annually to the College or reimburse, pre-pay, or post-pay

appropriate Presidential expenditures in compliance with State law and institutional policies and guidelines of the College. All such expenditures must comply with applicable provisions of the Internal Revenue Code of 1986, as amended, pertaining to the Foundation's status as a §501 (c) (3) supporting organization and be consistent with the Foundation's mission. Such funds will be audited as part of the Foundation's audits.

The College's Relationship to the Foundation

- The College President shall be responsible for communicating the College's priorities and long-term plans and goals to the Foundation.
- The College recognizes that the Foundation is a private corporation with the authority to keep all records and data confidential, consistent with this Agreement and applicable law.
- The College may include the Foundation as an active and prominent participant in the strategic planning for the College.
- The College's President shall serve as an ex officio voting member of the Board of Directors of the Foundation and shall have a prominent role in fund-raising activities. No employee of the College shall serve on the Board except in an ex officio capacity without the prior written consent of the College President. Ex officio members of the Board shall not hold the office of President or Chairperson of the Board of Directors.
- In consideration of the Foundation's services to the College in furtherance of its public mission and purposes, the College may contract with the Foundation to provide the Foundation with in-kind support as needed and requested by the Foundation, including such staff, office, space, and technological support as may be needed by the Foundation.

Foundation Responsibilities

1. Fund-Raising

- The Foundation shall create an environment conducive to increasing levels of private support for the mission, purposes, and priorities of the College.
- The Foundation, in consultation with the College President, is responsible for planning and executing comprehensive fund-raising and donor-acquisition programs

in support of the College's mission and purposes. Those programs include annual giving, major gifts, planned gifts, special projects, and campaigns as appropriate.

- The Foundation shall establish, adhere to, and periodically assess its gift-management and acceptance policies. Such policies shall not be inconsistent with applicable policies and guidelines of the State Board of Education and the Alabama College System. The Foundation will promptly acknowledge and issue receipts for all gifts received on behalf of the Foundation or the College and provide appropriate recognition and stewardship of such gifts.
- The College recognizes that the Foundation bears major responsibility for fund-raising; and the College will coordinate fund-raising initiatives, including major gifts solicitations, with the Foundation.
- The College President will work with the leadership of the Foundation Board and the Foundation President to identify, cultivate, and solicit prospects for private gifts.
- The Foundation shall not accept grants from State or Federal agencies except in special circumstances that are approved by the Foundation Board and the College President.
- The Foundation shall establish and enforce policies to protect donor confidentiality and rights.

2. Asset Management

- The Foundation shall establish asset-allocation, disbursement, and spending policies that adhere to applicable Federal and State laws, such as the Uniform Management of Institutional Funds Act (UMIFA), *Ala. Code (1975) §16-61A-1 et seq.*
- The Foundation shall receive, hold, manage, invest, and disburse 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.

3. Institutional Flexibility

- The Foundation shall explore current opportunities, including the acquisition and management of real estate on behalf of the College for future allocation, transfer, or use.
- The Foundation may serve as an instrument for ancillary activities for the College and engage in such activities as purchasing, developing, or managing real estate for

College expansion, student housing, or retirement communities. The Foundation may also hold licensing agreements and other forms of intellectual property, or borrow or guarantee debt issued by their parties.

- 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. The College will abide by all such restrictions and limitations and maintain appropriate documentation to be provided if requested.

4. Transfer of Funds

- The Foundation shall be the primary depository of private gifts and will transfer funds to the designated entity or program within the College in compliance with applicable laws, policies, and gifts agreements. Nevertheless, no provision of this Agreement shall be construed to prohibit or require the diversion of gifts that donors may wish to make directly to the College.
- 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 applicable law.

5. Accountability and Reporting

- The Foundation must prepare annual financial statements in conformity with generally accepted accounting principles and have them audited by an independent certified public accountant (independent auditor) in accordance with generally accepted auditing standards, no less than once every three years. To enable the College and the Alabama Department of Postsecondary Education to include pertinent information in their annual financial reports and statements, the audit must be completed in time to be reflected on a timely basis in the College's reporting cycle.
- The books, records, financial condition, operating results, and program activities of the Foundation shall be subject to inspection and periodic audit by the Chancellor of the Alabama Department of Postsecondary Education or his/her designees. The Foundation shall be subject to the financial reporting requirements set by the Governmental Accounting Standards Board (GASB). The Foundation shall provide the College with such information as the College may require under GASB reporting requirements.

Student and Alumni Records

- The College shall make available to the Foundation records and information concerning students or alumni of the College in accordance with requirements of the Family Educational Rights and Privacy Act of 1974, and any amendments and regulations adopted under the Act. No such record or information shall be released by the Foundation to any other person or entity without the written permission of the College.
- In carrying out the terms of this Agreement, the Foundation may receive, maintain, process, or otherwise have access to confidential information on students and/or customers of the College. With respect to that confidential information, the Foundation will comply with the Gramm-Leach-Bliley Act (P.L. 106-102), as amended, and the Federal Trade Commission's Safeguards Rule (16 CFR Part 314). As part of doing so, the Foundation agrees that it will: (1) protect the security and confidentiality of student and/or College customer records and information; (2) protect against any anticipated threats or hazards to the security or integrity of such records; and (3) protect against unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to any student and/or College customer.
- If the Foundation sub-contracts with a third party for any services required of the Foundation in the furtherance of this Agreement, the Foundation shall ensure that such third party implements practices to protect nonpublic personal information of students and/or College customers that they receive, maintain, process, or are permitted to access.

Foundation Funding and Administration

- The Foundation is responsible for establishing a financial plan to underwrite the cost of Foundation programs, operations, and services.
- The Foundation has the right to use a reasonable percentage of its annual unrestricted funds, or to assess fees for services, to support its operations.
- The Foundation, at its own expense, will provide adequate personnel (beyond personnel who will be provided by the College), office supplies, and other such services as may be necessary or required to fulfill its responsibilities and obligations.

- The Foundation shall maintain, at its own expense, copies of the plans, budgets, and donor and alumni records developed in connection with the performance of its obligations.

Miscellaneous Terms

- To ensure effective achievement of the terms of this Agreement, College officials shall meet not less than quarterly with Foundation Directors and officers to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.
- Either party to this Agreement may, upon not less than ninety days prior written notice to the other party, terminate this Agreement. Notwithstanding the foregoing, either party may terminate this Agreement upon written notice to the other party in the event that the other party has defaulted in the performance of its obligations stated herein and has failed to cure the default within a reasonable time after receiving written notice of the default.
- Should the Foundation (or any subsidiary thereof) cease to exist, or cease to be a supporting organization of the College, or cease to be a qualified organization under §501 (c) (3) of the Internal Revenue Code of 1986, as amended, then the Foundation (or the respective subsidiary) shall transfer its assets and property to the College or to a College-approved incorporated successor foundation, in accordance with law and donor intent.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers to be effective on the date first stated herein above.

**LAWSON STATE
COMMUNITY COLLEGE**

**THE LAWSON STATE
COMMUNITY COLLEGE FOUNDATION**

By: *Perry W. Wood*
As Its President

By: *Jim Fellos*
As Its President

Date: 5-6-2008

Date: MAY 6, 2008