

**AGREEMENT BETWEEN
BROWARD COLLEGE BOARD OF TRUSTEES
AND
BROWARD COLLEGE FOUNDATION, INC.**

THIS AGREEMENT (“Agreement”), is made and entered into on the last date signed below by and between the Broward College Board of Trustees (the “College”), and Broward College Foundation, Inc. (the “Foundation”).

WHEREAS, the Foundation is a direct support organization of the College as defined in Section 1004.70, Florida Statutes, and is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to, or for the benefit of Broward College; and

WHEREAS, the Foundation is a not for profit corporation under the provisions of Chapter 617 of the Florida Statutes and is exempt from federal income tax under IRC §501(c)(3). The Foundation is responsible for soliciting and administering gifts and bequests of property and funds to support the educational purposes of the College and to expend its donor funds in a manner consistent with the spirit and intent of its donors; and

WHEREAS, Board members of the Foundation have a responsibility to maintain knowledge of the College’s mission, programs, resources, and needs; to serve as effective College spokespersons in the community; to assist the President and Foundation staff in establishing and maintaining a favorable climate for giving; to participate actively in the fundraising programs of the Foundation through attendance at meetings and by providing financial support of the College; to review and approve the Foundation’s annual operating budget; and to determine investment goals and objectives of the Foundation’s funds; and

WHEREAS, the College has oversight responsibility for the Foundation due to its status as a direct support organization of the College, and in order to fulfill that responsibility, the College requires the Foundation to be properly organized and operated to meet the minimum standards and requirements set forth in this Agreement; and

WHEREAS, on December 11, 2012, the College and the Foundation entered into an agreement setting forth the relationship between the parties; and

WHEREAS, This Agreement supersedes and replaces all prior agreements between the parties. .

NOW THEREFORE, for and in consideration of the mutual commitments, obligations, and benefits hereby undertaken, the Parties agree as follows:

I. Use of College Name, Seal and Logo

- A. Consistent with its mission to help to advance the plans and objectives of the College, the Foundation may use the College’s name, seal, logos, acronyms, and other symbols (“College Marks”) in the promotion of its business and activities, provided that, the Foundation clearly communicates that it is conducting business in its own name for the

benefit of the College. All correspondence, advertisements, and other communications by the Foundation must clearly indicate the communication is by the Foundation and not from the College. The Foundation may use the College Marks only in connection with the services rendered for the benefit of the College and in accordance with the guidance and directions furnished to the Foundation by the College, or its representatives or agents, from time to time. The College shall exercise control over and be the sole judge of whether or not the Foundation has met or is meeting the established standards of quality.

- B. The Foundation is not authorized to delegate the authority to use any College marks to any person or entity.

II. Institutional Governance

- A. The day-to-day governance of the Foundation's corporate affairs shall be in accordance with its bylaws. The bylaws must contain provisions dealing with the membership of its governing board, meeting requirements, and duties of its board members. ~~Any amendments to the bylaws require approval of the Board of Trustees.~~ ¹
- B. As required by statute, the Board of Trustees shall prescribe by policy any required conditions with which the Foundation must comply in order to use property, facilities, or personal services of the College.

III. Board of Trustees Support of Foundation's Role

The Board of Trustees recognizes the critical role played by the Foundation in advancing the College by encouraging, managing, and administering charitable gifts from alumni, friends, corporations, and foundations. The Board of Trustees is committed to actively supporting the Foundation Board through advocacy, participation in fundraising and/or donor recognition activities, and personal financial support.

IV. The Foundation's obligations to the College

- A. The Foundation will at all times operate in a manner that is consistent with the goals of the College and in accordance with all applicable laws governing College direct support organizations in Florida.
- B. The Foundation Board of Directors shall prudently manage all gifts consistent with donor intent.
- C. The senior officer of the Foundation shall be an employee of the College selected by the President of the College. ¹ The senior officer shall report to the College President or a designee reporting directly to the President. The senior officer shall advise, inform, and serve as a key liaison to the Foundation Board of Directors, especially with respect to business and fiduciary matters. The senior officer is responsible for implementing Foundation policies and actions taken by the Foundation Board of

Summary of Comments on Memorandum of Understanding between Broward College Broward College Foundation dtd 08-20-2024 (00617361-2xC4B6A) (002).pdf

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The Board of Trustees shall have an opportunity to provide input related to amendments of the Foundation's bylaws prior to the adoption of such amendment by the Foundation.


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The College President shall communicate with the Chair of the Foundation Board prior to removal or appointment of the senior officer.

Directors.

V. **The College's Obligations to the Foundation**


- A. The College President is responsible for communicating the College's priorities and long-term plans, as approved by the Board of Trustees, to the Foundation.
- B. The College shall establish and enforce policies supporting the Foundation's ability to respect the privacy and confidentiality of donor records in accordance with Florida law.
- C. The College shall include the Foundation as an active and prominent participant in the strategic planning for the College.
- D. The Chair of the Board of Trustees shall appoint at least one representative to the Foundation Board of Directors and the executive committee of the Foundation. The College President or President's designee shall also serve on the Foundation Board of Directors and Foundation executive committee. ~~The Board of Trustees must approve all other appointments to the Foundation Board.~~¹
- E. The College may provide the Foundation with fair and reasonable compensation for services. The amount of compensation may be negotiated on an annual basis.² ~~3~~ Consideration of Foundation services, the College may also provide in-kind support, including but not limited to use of College premises, technology resources, professional or other staff such as accounting/finance staff, procurement, legal counsel, facilities maintenance, and the like.
- F. College representatives will coordinate fund- raising initiatives including major gifts solicitations with the Foundation.
- G. The College President will work in conjunction with the leadership of the Foundation Board and the Foundation senior executive to identify, cultivate, and solicit prospects for private gifts.
- H. The College is responsible for the employment, compensation, and evaluation of all its employees, including any employees assigned to perform any work or functions on behalf of the Foundation. The College shall establish and enforce policies that support the Foundation's ability to respect the privacy and confidentiality of donor records in accordance with Florida law.
- I. The College will prescribe by policy any condition with which the Foundation must comply to in order for the Foundation to use College property, facilities and personnel services. ⁴
- J. The College will document Board consideration and approval of the Foundation's anticipated use of College resources, at least annually, before the

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The Board of Trustees shall be afforded an opportunity to and may provide input to the Foundation prior to the Foundation making appointments to the Foundation Board.

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Compensation is an area that needs careful review under the provisions of IRC Section 501(c)(3). I presume that this is related to compensation for the Foundation, not its board members, but I am just making sure that future board members for both parties are aware that such compensation affects the 501(c)(3) status of the Foundation.

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and shall conform to all requirements of the Internal Revenue Code.

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It is understood that such policies or rules are required with respect to the College's audit findings. The Foundation anticipates such policies and looks forward to working with the College to ensure this obligation is met.

use occurs. This will include identifying the positions of employees who will provide the personal services, the square footage of Foundation office space and related buildings and property that will be used by the Foundation, and the estimated value of the College resources provided.

VI. **Foundation Responsibilities**

A. **Fund-Raising**

1. 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 institution's mission. These programs include annual giving, major gifts, planned gifts, special projects, and campaigns as appropriate.
2. The Foundation will establish, adhere to, 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 provide appropriate recognition and stewardship of such gifts.
3. The Foundation shall not accept grants from state or federal agencies, except in special circumstances that are approved by the College Board of Trustees, the Foundation Board of Directors, and the governmental agency.
4. The Foundation shall establish and enforce policies to protect donor confidentiality and rights in accordance with Florida law.
5. The Foundation shall comply with all policies prescribed by Board of Trustees related to direct support organizations.²



B. **Asset Management**

1. The Foundation will establish asset-allocation, disbursement, and spending policies that adhere to applicable federal and state laws including the Uniform Prudent Management of Institutional Funds Act (UPMIFA).
2. 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 or otherwise, in accordance with its gift policies and applicable law.

C. **Institutional Flexibility**


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The Foundation concern with this provision as open ended as it is drafted is that such policies should not conflict with the Foundation's independence as a 501(c)(3) designation. The Foundation should not be put into a position of being required to abide by a College policy that would impair the Foundation's 501(c)(3) designation by policy where it could not agree to such provision by agreement.

Moreover, Section 1004.07, Florida Statutes, limits this authority to the use of College property, facilities, or personal services.

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use of College property, facilities, or personal services and to the extent that such policy does not impair or impact the Foundation's independent corporate status or its 501(c)(3) designation by the Internal Revenue Service.

1. The Foundation, with prior approval¹ of the Board of Trustees, may explore current opportunities, including acquisition and management of real estate on behalf of the College for future allocation, transfer, or use. It also may hold licensing agreements and other forms of donated intellectual property, borrow, or guarantee debt, or engage in other activities to further the purposes of the College.³ ²
2. When distributing gift funds to the College, the Foundation shall monitor and disclose any terms, conditions, or limitations imposed by donor or legal determination on the gift. The College shall abide by such restrictions to the extent permitted by law.


VII. **Foundation Funding and Administration**


- A. The Foundation is responsible for establishing a financial plan and annual budget to underwrite the cost of Foundation programs, operations, and services. The annual budget of the Foundation shall be approved by Board of Directors and presented to the Board of Trustees as information. Significant changes in planned expenditures in the approved budget must be reported to the Board of Trustees as soon as practicable.
- B. The Foundation has the right to fund its operations by reasonable means in accordance with Foundation Board approved policies. Such methods may include the assessment of fees for services, imposing administrative fees, or utilizing a percentage of the earnings from the overall investment pool. These policies must be approved by the Board of Trustees
- C. 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.
- D. The Foundation will provide access to data and records to the College upon request of the President. The Foundation will provide to the Board of Trustees copies of its annual report, and any other information requested by the Board.
- E. The Foundation shall provide in its governing documents that should the Board of Trustees find that a Foundation Board member is not acting in the best interest of the College, that the board member may be removed by affirmative vote of the Board of Trustees.


VIII. **Communication Between the Board of Trustees and the Foundation Board**

- A. The Foundation shall provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant in accordance with rules adopted by the State of Florida Auditor General pursuant to s. 11.45(8), Florida Statutes and

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input

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This provision enables the Foundation to act with input from the College on all other types of opportunities, but to remain in compliance with the obligation of prior authorization by the College for any debt obligation incurred.


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The College must authorize all debt, including lease-purchase agreements, incurred by the Foundation.

by the Board of Trustees.


- B. The Board of Trustees will receive a copy of the audit of the Foundation's financial and operational records and the annual audited financial statements, including management letter, and will certify the compliance of the Foundation with applicable statutes and rules with regard to direct support organizations of the College.
- C. The Foundation will report its anticipated use of College resources to the Board of Trustees on an annual basis. The report will identify the number and position of employees who will provide personal services to the Foundation, as well as the square footage of the areas in the College buildings which will be utilized as office space by the Foundation. The College may then ascribe the value of such property use in accordance with its internal valuation formula.

IX Miscellaneous

- A. Annual Certification. The Foundation will annually certify to the Board of Trustees in the form of a letter signed by the Foundation's senior officer that the College resources allocated in the prior fiscal year were used for the purposes approved by the Board of Trustees.
- B. Amendments. Amendments to the Articles of Incorporation or Bylaws of the Foundation occurring other than by operation of law are subject to prior approval by the Board of Trustees.
- C. Periodic Meetings. To ensure effective achievement of the terms of this Agreement, 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.
- D. Liability. The College and the Foundation are separate and distinct legal entities, and nothing in this agreement is intended to create or constitute a joint venture, partnership, agency, trust, or other association of any kind between the parties or persons referred to herein. Except as otherwise provided herein, no party shall have any right, power, or authority to create any obligation, express or implied, on behalf of any other party. The maximum limit of the College's liability shall be those limits set forth in Section 768.28, Florida Statutes, and nothing in this agreement shall be construed as a waiver of sovereign immunity beyond the limits in that statute.
- E. Decertification. At any time, the President of the College may recommend to the BOF [1] that the Foundation be decertified as a DSO [2] if the President determines that the Foundation is no longer operating for the benefit of the College, the tax-exempt status of the Foundation has been revoked by the Internal Revenue Service, or the Foundation has persistently failed to materially comply with applicable laws, rules, or

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Board of Trustees

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direct support organization

this operating memorandum. Upon decertification, the Foundation will transfer all assets to the College or to another 501(c)(3) organization as directed by the College.

Broward College Board of Trustees

Broward College Foundation, Inc.

By: _____
Its: Chair

By: _____
Its: Chair