

AGREEMENT
BETWEEN
COLLEGE OF SOUTHERN MARYLAND
AND
COLLEGE OF SOUTHERN MARYLAND FOUNDATION, INC.

This Agreement is made on this 20 day of June, 2007 by and between the College of Southern Maryland ("College"), 8730 Mitchell Road, Post Office Box 910, La Plata, Maryland 20646-0910 and the College of Southern Maryland Foundation, Inc. ("Foundation"), 8730 Mitchell Road, Post Office Box 910, La Plata, Maryland 20646-0910.

WHEREAS, the College operates as an educational institution established under Maryland Code-Education §16-601; and

WHEREAS, the Foundation, established in 1970 for charitable and educational purposes as defined by Section 501(c)(3) of the Internal Revenue Code and approved as a charitable organization under Maryland Code Article 41-103A-103L, operates exclusively to serve and support the mission of the College; and

WHEREAS, the College recognizes the Foundation as a separate, legal entity specifically created for the purpose of soliciting, collecting, managing, and reporting charitable gifts, both financial and tangible, for the furtherance of the College's missions; and

WHEREAS, the Foundation recognizes that the College is a separate, legal entity and public community college whose administration, faculty, and staff are committed to meeting the educational, workforce development, and other needs of Southern Maryland; and

WHEREAS, the College recognizes the hard work and devotion of Foundation board members in support of the College, its faculty, employees, students and the community at large through the board members efforts to raise funds in support of the College; and

WHEREAS, the Foundation recognizes the substantial commitments that the College has made, in both money and personnel, to the success of the Foundation; and

WHEREAS, the College and the Foundation both desire to enter into a formal agreement to continue the mutually supportive relationship that the parties have enjoyed over many years;

NOW, THEREFORE, in consideration of the mutual promises and conditions contained in this agreement, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the College and the Foundation agree as follows:

COLLEGE SUPPORT TO THE FOUNDATION

1. The College recognizes the Foundation as the preferred depository for all gifts to the College, other than gifts of real or tangible property to be retained by the College. The college shall not establish or recognize charitable organizations other than the Foundation as entitled for donations of gifts to or in support of the College.
2. Upon request, the College will provide the Foundation with the College's current strategic plan and other planning documents so that the Foundation may create and meet clear and measurable fundraising objectives by which to further the College's institutional goals.
3. The College will provide staff, facilities and services to the Foundation as described below.
 - a. *Personnel:*
 - i. Administrative Officer: The President will assign an executive officer to serve as the administrative officer and liaison for the Foundation ("Administrative Officer"). The Administrative Officer shall be responsible for responding to Foundation proposed fundraising activities or strategies, and to consider Foundation requests for College data or other information collected by the College.
 - ii. The College will assign personnel to support the Foundation's operations and activities performed in support of the College. The number of such personnel and level of support shall be at the sole discretion of the College and shall be subject to budgetary and other constraints.
 - iii. The College will recruit, hire, and compensate such personnel in accordance with its policies and procedures, as it may amend from time to time. Compensation includes salary, employment taxes and benefits, which include but are not limited to access to health care and retirement plans, vacation and sick leave, and professional development opportunities.
 - iv. The president will direct, hire, and supervise the Administrative Officer. The Administrative Officer shall direct, hire, and supervise other personnel that may be assigned by the College to support the Foundation.
 - b. *Facilities:* The College shall provide to the Foundation, at no charge (except as otherwise noted herein), access to facilities and equipment, such as meeting space and associated technology, at least to the same extent as it provides to other organizations. Overtime and other direct costs, whether for personnel or equipment, incurred by the college may be charged to the Foundation by the College at no more than the actual cost to the College. The Foundation shall pay such charges to the College within 30 days of billing by the College.

- c. *Materials and Services*: The College shall not charge the Foundation for costs associated with routine office and administrative correspondence and supplies. The College shall provide, at pre-arranged charges set by the College, other materials and services to the Foundation, such as postage, photocopying, photography, design and communication services, and marketing support. The College will submit billing statements to the Foundation for reimbursement (within thirty (30) days of receipt) for the charges of materials and services used by the Foundation.
- d. *Technology/World Wide Web*: The College will maintain, at no charge, the Foundation's space on the College's website; a minimum of two e-mail address for the Foundation and ongoing technical support for the Foundation's website maintenance.
 - i. The Foundation's use of space on the College's web server will be subject to College policies that pertain to computers, technology, and World Wide Web usage. Such policies shall be made available to the Foundation through the Administrative Officer. The College may amend such policies from time to time as it sees fit.
 - ii. Without limiting the forgoing, the Foundation will comply with all provisions stated in the College policy on the usage of computing resources as stated in the Administrative Policy PRE-1405, which may be amended from time to time as the College sees fit. (Attachment A: Administrative Policy PRE-1405)
 - iii. The College may, in its sole discretion, limit the space used by the Foundation on the College's website. The College shall inform the Foundation of any such limitations.
- 4. The College grants permission to the Foundation for use of the name, "College of Southern Maryland", abbreviation "CSM", and logo, a yellow and black, block, and swoosh symbol, during the course of Foundation business in support of the College. (Attachment B: Logo) The Foundation has no right to further license or assign the College's name or logo and any such license or assignment is void.
- 5. The College shall include the Foundation as an additional named insured under the College's Commercial Crime Policy, Non-Profit Liability Policy, Media Special Perils Policy, and Commercial General Liability Policy if the College maintains such insurance policies. The College shall not, by this Agreement, be required to maintain any or all such policies but shall notify the Foundation in the event that the College elects not to obtain or renew such policies.

FOUNDATION SUPPORT OF THE COLLEGE

- 6. The Foundation's sole and only operation will be to provide financial, programmatic, and other support to the College in fulfilling its role in serving the educational, workforce

development, and other needs of Southern Maryland. The Foundation will collect and manage the investments and distribute to the College “funds” (assets created through contributions given to the Foundation by and from all sources), except as may be required for the reasonable operation of the Foundation and in accordance with the specific terms of a gift or contribution.

- i. The Foundation will conduct fundraising and resource raising campaigns, drives, and efforts solely on behalf of the College. The College’s Administrative Officer will coordinate with the Foundation the Foundation’s annual and campaign funding goals, programs, and events.
 - ii. Funds and resources collected by the Foundation or transferred to the Foundation by the College shall be held and invested pursuant to a legally appropriate investment policy, which the Foundation shall establish and communicate to the College. The Foundation may amend such policy from time to time but shall inform the College of such amendments within 30 days of their adoption.
 - iii. The Foundation may disburse funds solely to the College for the College’s use in furthering the College’s missions. The Foundation may not grant or distribute funds to other organizations or individuals without the College’s written agreement.
 - iv. The Foundation shall establish and implement a system of controls that ensure compliance with restrictions placed by donors on gifts, applicable laws and regulations, specifically including state and federal laws regarding the Foundation’s non-profit, tax-exempt status.
7. The Foundation and members of its Board of Directors may not use the College name for business unrelated to the Foundation’s and College’s missions.
 8. The Foundation will give the president or the president’s designee, a copy of the Foundation’s budget for the fiscal year within fifteen (15) days of either its adoption or the start of the Foundation’s fiscal year, whichever comes first.
 9. The Foundation may not amend its By-Laws or Articles of Incorporation in a way that contradicts this Agreement. Upon amending the Foundation By-Laws or Articles of Incorporation, the Foundation must give a copy of the amendment to the president and chair of the College’s Board of Trustees for their records.
 10. Upon dissolution of the Foundation, all monies, property, and other assets, including all donor records, received or being held by the Foundation shall be transferred immediately to the College or its designee.
 11. The Foundation shall be solely responsible for the accuracy of all of its own financial records including, but not limited to, those pertaining to contributions, disbursements, and receipts to unrestricted and restricted accounts, endowments, annuities, and investments.

12. Reporting of Foundation Finances: The Foundation shall report to the president on its finances, at a minimum, on a quarterly and annual basis. The president will present information from these reports as appropriate to the College's Board of Trustees.
 - a. Quarterly Reporting: The Foundation will report quarterly to the president. The report shall include, but is not limited to, the Foundation's quarterly income and expenses, balance sheet, and report on investments.
 - b. Annual Audit: The Foundation's records will be audited annually, at the conclusion of the fiscal year ending June 30th, by an independent certified public accountant selected by the Foundation.
 - i. The audit will follow generally accepted accounting principles and practices. The audit will be made available to the public by the College upon written request.
 - ii. The annual audit will contain:
 1. A management letter which specifically addresses the operating procedures of the Foundation and recommends any corrective actions necessary to ensure proper fiscal propriety and efficiency, and
 2. A list of major activities, officers, and campaign progress to the College, and
 3. A balance sheet and income and expense sheet, and
 4. Such other information as reasonably requested by the College or its designees.
 - iii. A copy of the completed Foundation audit will be given to the president within fifteen (15) days of its completion. After delivery to the president, the president or the president's designee shall provide a report on the audit to the College's Board of Trustees.
13. The Foundation shall grant the College, upon written request, access to and a copy of the Foundation's corporate records, books, and accounts for review, inspection, and evaluation by the College or its authorized representatives.
14. The Foundation will uphold its exemption under Section 501(c)(3) of the Internal Revenue Code and will take no action which would cause this exemption to be revoked or limited. The Foundation shall immediately inform the College if it receives any notice or correspondence from the IRS relating to losing or potentially losing its status as a 501(c)(3) organization.
15. Advancement Policies

- a. Accepting Gifts
 - i. The Foundation shall seek written College approval of any restrictive terms and conditions placed on a gift by a donor. The Foundation will inform the donor that a restricted gift for the benefit of the College may not be accepted without such approval.
 - b. Disbursements to College
 - i. The Foundation will distribute funds to the College as requested by the donor, and the College will distribute these funds in accordance with donor restrictions (to the extent not inconsistent with the law) and College policies and procedures.
 - ii. The Foundation will adhere to any lawful restrictions placed on donations by its donors.
 - iii. The Foundation will not accept any donations that violate any law, this Agreement, or as required in the Foundation By-Laws.
 - iv. The Foundation will not disburse Foundation monies to College employees or students directly, unless specifically permitted in writing by the president.
 - c. Distribution of Funds
 - i. Under no circumstances shall any of the earnings or assets of the Foundation inure to or be distributed to the benefit of its directors or officers.
16. The Foundation shall immediately provide written notice to the College of all suits, administrative actions (such as, but not limited to, charges filed with the Maryland Commission on Human Relations), and all written threats of suit against the Foundation or the College.

TERM AND TERMINATION

17. The term of this Agreement shall be from the date on which it bears the signatures of both parties until parties revise or terminate the agreement. The College and the Foundation shall review this Agreement prior to its termination, to negotiate in good faith, a new agreement or an extension of this Agreement.
18. This Agreement may be terminated prior to the termination date set forth above by:
- a. Mutual written consent of the parties;
 - b. Any party, with or without cause, by providing written notice of intent to terminate at least one hundred twenty (120) days prior to the desired date of termination;

- c. Either party for a material breach of this Agreement which has not been corrected within thirty (30) days after a written notice of such material breach has been received. Should the breach not be corrected within the first notice period, notice will be sent to the party in breach stating the Agreement will terminate at the end of fifteen (15) days from the date of conclusion of the first notice; or
 - d. The College immediately if the Foundation is informed by the IRS that it no longer qualifies as a 501(c)(3) organization.
19. Articles 7, 11, 12, 13, 16, 20, 21, 22 and 23 shall survive termination of this Agreement and remain enforceable between the parties. Article 12 shall survive solely with respect to one quarterly report and one annual audit following termination of the Agreement. Article 13 shall survive solely with respect to corporate records, books and accounts related to the effective period of this Agreement. Article 16 shall survive only with respect to suits, administrative actions, and written threats of suit that relate to actions pre-dating the effective date of the termination.

MISCELLANEOUS

20. To the fullest extent permitted by law, the Foundation shall defend, indemnify, and hold harmless the College, its governing board, officers, and employees at all times from and against any and all claims, damages, liabilities, injuries, expenses, demands, and judgments, including court costs and attorney fees which arise out of, or in connection with, any acts or omissions of the Foundation, its officers, or any breach of this Agreement.
21. As separate legal entities, the Foundation and the College will ensure that all correspondence, solicitation, activities, and advertisements concerning the Foundation are readily identified as being from the Foundation.
22. As separate legal entities, the Foundation, its Board of Directors, or its employees may not act as agents or employees of the College or enter into an agreement on behalf of the College.
23. This contract does not create any legal or equitable rights on the part of any third party, as a third party beneficiary or otherwise.
24. The College and the Foundation agree that there will be no assignment or transfer of this Agreement or of any right, title, or interest hereunder; any purported assignment shall be absolutely void and of no effect.
25. This Agreement constitutes the entire Agreement between the parties, and supercedes any prior written or oral agreement relating to this relationship.
26. There may be no modification of this Agreement, unless the amendment is in writing and signed by representatives of both parties.

27. In the event that, for any reason whatsoever, any clause or provision of this Agreement (or the application of such clause or provision to a particular set of circumstances) is held or declared to be invalid, illegal, or unenforceable, such holding or declaration shall not in any way affect the validity or enforceability of any other clause or provision of this Agreement (or the application of such clause or provision to a different set of circumstances).
28. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective partners, successors, assigns, and legal representatives.
29. All notices required under this Agreement shall be given in writing and delivered personally or sent by registered or certified mail, return receipt requested, first-class postage prepaid,
 - a. If to the College, to President, College of Southern Maryland, 8730 Mitchell Road, Post Office Box 910, La Plata, MD 20646-0910, and
 - b. If to the Foundation, to Chair, College of Southern Maryland Foundation, 8730 Mitchell Road, Post Office Box 910, La Plata, MD 20646-0910.

Notices will be deemed given on the date of delivery, if in the case of personal delivery, or at the time of mailing, in the case of mail delivery. Either party may change its notice address or addressee by giving the other party written notice of such change.

30. The parties agree that neither party, during the course of fulfilling this Agreement and related policies, will discriminate on the basis of gender, race, color, religion, marital status, sexual orientation, age, national or ethnic origin, or disability.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement as of this SIXTH day of June, 2007.

WITNESS

Date:

6/20/07

COLLEGE OF SOUTHERN MARYLAND

By:

Bradley M. Houghton

WITNESS

Date:

6/20/07

FOUNDATION FOR THE COLLEGE OF SOUTHERN MARYLAND, INC,

By:

[Signature]