

NORTH CAROLINA
BEAUFORT COUNTY

AMENDED
MEMORANDUM OF UNDERSTANDING
between
BEAUFORT COUNTY COMMUNITY COLLEGE and
BEAUFORT COUNTY COMMUNITY COLLEGE FOUNDATION

THIS MEMORANDUM OF UNDERSTANDING is made this the 16th day of January, 2018, by and between BEAUFORT COUNTY COMMUNITY COLLEGE, a North Carolina community college, hereinafter referred to as "College); and BEAUFORT COUNTY COMMUNITY COLLEGE FOUNDATION, a North Carolina non-profit corporation (hereinafter referred to as "Foundation").

WITNESSETH:

WHEREAS, Beaufort County Community College is an educational institution created pursuant to Chapter 115D of the North Carolina General Statutes; and

WHEREAS, N.C.G.S. §115D-20 provides for the establishment of private, nonprofit corporations to support the College, the sole purpose of which is "to support the institution."

WHEREAS, on January 26, 1984, the Beaufort County Community College Foundation was established pursuant to Chapter 55A of the North Carolina General Statutes as an independent 501(c)(3) non-profit corporation to support Beaufort County Community College; and

WHEREAS, the Beaufort County Community College Foundation was organized and operated exclusively to generate, receive, hold, invest, manage, and allocate funds for the advancement, achievement, benefit and support of Beaufort County Community College; and

WHEREAS, the Board of Trustees of Beaufort County Community College has delegated the authority of employing College personnel to the President of the College pursuant to N.C.G.S. §115D-20(2); and

WHEREAS the parties hereto wish to enter into this Memorandum of Understanding (MOU) to formalize the relationship between the parties in order to achieve efficient coordination between them to carry out their respective missions, and to comply with the requirements of the North Carolina General Statutes, the North Carolina Administrative Code, and accreditation requirements of the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) and

other applicable rules and regulations; and

THEREFORE, in consideration of the mutual covenants, promises and conditions contained herein, Beaufort County Community College and Beaufort County Community College Foundation agree as follows:

1.0 RESPONSIBILITIES OF THE COLLEGE

1.1 The College shall share annually, with the Foundation, its strategic plan, institutional priorities, projects, resource requirements, and other needs so that the Foundation may understand and know the needs and direction of the College, and align its programs and campaigns consistently therewith.

1.2 The College shall comply with its statutory authority to assign employees to assist with the operation of the Foundation. These employees shall be and remain for all purposes employees of College and subject to all rights, responsibilities, duties and obligations of other College Employees. As such, College employees assigned to the Foundation shall be subject to all applicable College and state policies. The College retains the right of supervision over these employees, and may modify or amend the job descriptions of these employees according to the needs of the College in satisfying this obligation to the Foundation. The job description of each employee so assigned is available for inspection by Foundation members at the College's Human Resources Department.

1.3 The College shall make available to the Foundation office space, equipment, supplies, utilities, hardware, software, technology support services, and other related resources at no cost to the Foundation to assist the Foundation in fulfilling its statutory obligation of supporting the College. Such office space shall be located in the discretion of the President, and according to the needs of other employees of the College, and shall include, but not be limited to, utilities, janitorial service, security, facilities maintenance, furniture and fixtures, use of campus mail service, campus vehicles, telephone, other reasonable communication services, and other services as may be needed from time to time by the Foundation. The College shall also provide at no cost to the Foundation, access to other services provided by the College that include reasonable copying, public relations, marketing, event scheduling and related facilities and services.

1.4 The College shall promptly alert the Foundation to prospective gifts, so that each opportunity for enhancing gift potential and donor relations is fully utilized.

1.5 The College shall cooperate with the Foundation in the development of the Foundation's fund raising programs and campaigns as may reasonably be necessary for the successful conduct of fund raising programs and campaigns.

1.6 The Foundation Board of Directors shall consist of three ex officio members comprised of the College President, the Chair of the College Board of Trustees and the Vice President of Administrative Services, and a minimum of 15 up to a maximum of 24 regular members. Regular members shall be selected by the College Board of Trustees, from a proposed slate nominated by the Foundation Executive Director, the College President, and the Foundation Nominating Committee. The Foundation shall submit these names along with a short biography of the proposed member to the College Board of Trustees for their consideration and appointment.

1.7 The College's authorized agent for purposes of administration of this MOU is the College President with the support of the Foundation Executive Director and Foundation Chair.

1.8 The Foundation Executive Director shall conduct orientation for all new members of the Foundation Board of Directors, along with a refresher course as needed for all current members. The Foundation will require that all members attend their respective orientation.

1.9 The College designates the Foundation as the repository of private gifts made in support of the College unless otherwise specified by the donor. The College recognizes that the Foundation is a separate, private corporation with the authority to keep all records and data confidential, consistent with the law. The College recognizes that the Foundation bears major responsibility for fund raising, and College representatives will coordinate fundraising initiatives, including major gifts solicitations with the Foundation.

2.0 RESPONSIBILITIES OF THE FOUNDATION

2.1 In carrying out its mission, the Foundation shall hold, raise, invest, manage, distribute, and endow funds and property for specific College purposes in accordance with the laws of the State of North Carolina and any applicable federal laws. The Foundation is responsible for planning and executing comprehensive fundraising and donor acquisition programs in support of the strategic

priorities identified by the President and College Board of Trustees. These programs include annual giving, major gifts, planned gifts, special projects, and campaigns as appropriate. Such funds collected shall be used for educational, cultural, and excellence programs, college advancement, real estate and campus expansion, capital improvements including signage, educational infrastructure and equipment, and other innovation projects as provided by the College President and Board of Trustees and agreed upon by the Foundation Board of Directors.

2.2 The Foundation is responsible for identifying and nurturing relationships with potential donors and other friends of the College, soliciting cash, gifts, securities, real and intellectual property, and other private resources for the support of the College, and where appropriate, in the name of the Foundation, on behalf of the College. Correspondence, solicitations, activities and advertisements concerning the Foundation shall be clearly discernible as being from the Foundation. The foregoing notwithstanding, the College may authorize the use of the College's name, trademarks and servicemarks for Foundation activities. The Foundation shall cease using said trademarks and servicemarks in the event of:

- a. dissolution of Foundation;
- b. termination of the MOU between the parties; or
- c. the Foundation ceases to be 501(c)(3) non-profit corporation.

2.3 The Foundation shall conduct its activities in such a manner to maintain its status as an independent, non-profit, tax exempt, charitable organization under state and federal tax laws. The Foundation will establish internal controls and other risk enterprise management practices commensurate with its fiduciary responsibility.

2.4 The Foundation shall plan all fund raising activities and the promotion and sponsoring of programs in support of College activities in a manner consistent with the mission, purpose and stated needs of the College and in close cooperation with the President of the College, and with the support of the Foundation Executive Director and Foundation Chair. The Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of the College. The Foundation shall not accept grants from state or federal agencies, except in special circumstances that are approved by the College President and the government agency.

2.5 The Foundation may serve as an instrument for entrepreneurial activities for the College and engage in such activities as purchasing, developing or managing real estate for campus expansion, or participating in joint ventures that advance the mission of the College. It also may hold licensing agreements and other forms of intellectual property, or engage in other activities to increase Foundation revenue.

2.6 The Foundation, by and through its Board of Directors, shall secure and pay for the services of the State Auditor's Office or employ a certified public accountant to conduct the annual audit of the financial accounts of the corporation. The Foundation, by and through its Board of Directors, shall share and transmit to the College and College President, a copy of the annual financial audit report. The Foundation shall provide a copy of the audit and the annual report to the College President, including but not limited to, the activities, programs, holdings, investments, income, and fiscal operations of the Foundation, and said audit and annual report shall be presented to the College Board of Trustees by the President.

2.7 On or before June 30 of each year, the Foundation, by and through its Board of Directors, shall prepare and propose an annual budget to be reviewed by the College Board of Trustees, so that the College may predict the financial and other needs of the Foundation, including operational needs and services. This budget shall contain a cost benefit analysis of its fund raising activities.

2.8 The Foundation shall assume responsibility for the cost of its variable expenses, fund raising campaigns, and other projects, with the intention that all such activities shall be self supporting. The Foundation will internally address any shortfalls of such projects and will not expect the College to cover same.

2.9 The Foundation agrees to notify, coordinate with, and solicit the comments of the College President regarding all significant disbursements and expenditures planned by the Foundation on behalf of the College.

2.10 The Foundation will establish, adhere to, and periodically assess its gift management and acceptance policies which will be utilized in regard to gifts of real estate and other types of gifts, and to follow the requirements of North Carolina General Statutes, Chapter 36E, entitled "Uniform Prudent Management of Institutional Funds Act." The Foundation shall obtain prior

approval from the College before accepting any gift for the benefit of the College that contains restrictive terms or conditions. The Foundation will advise prospective donors that any such gift(s) are subject to the approval of the College under this MOU.

2.11 The Board of Directors of the Foundation shall be responsible for acknowledging and stewarding gifts in accordance with donor intent and fiduciary responsibilities. It will promptly acknowledge and issue receipts for all gifts. The Foundation shall establish and enforce policies to protect donor confidentiality and rights.

2.12 The Foundation Board of Directors retains their right to refuse any contribution, donation, or gift which comes from a source which, in the Foundation Board's determination, is not in concert with the Foundation's mission or its inherent legal, moral, and ethical standards.

2.13 The Foundation shall use sound fiscal and business principles, have internal controls in place, and follow generally accepted accounting procedures which include:

- a. Preparation of an annual operations budget.
- b. No direct payments from Foundation to any College employee.
- c. No acquisition of debt by Foundation.
- d. All gifts are carried out in accordance with the intent of the donor, and proof thereof shall be maintained.

2.14 The books, records, minutes, documents, and procedures and practices of the Foundation relevant to or affecting this MOU shall be subject to inspection by the College Board of Trustees, the College President, and the State Auditor upon request. The foregoing notwithstanding, the Foundation shall not disclose donation amounts to the College Board of Trustees or any other entity or person unless express permission is given by the donor.

2.15 The Foundation will consult with the College President and Board of Trustees before making any changes to the Bylaws that impact or relate to the Foundation's statutory mission, the College's accrediting with Southern Association of Colleges and Schools Commission on Colleges (SACSCOC), or the collaborative relationship between the Foundation and the College. The Foundation shall provide the College President with an advance copy of any amendments, additions, or deletions to the Foundation's Bylaws.

2.16 Any changes in the Foundation's articles of incorporation must be approved by the College Board of Trustees and the North Carolina State Board of Community Colleges. Any such changes shall be consistent with, and not impair the Foundation's statutory mission, the College's accrediting with Southern Association of Colleges and Schools Commission on Colleges (SACSCOC), or the collaborative relationship between the Foundation and the College. The Foundation shall provide the College President with an advance copy of any such proposed amendments to Articles of Incorporation.

3.0 RELATIONSHIP BETWEEN THE COLLEGE AND THE FOUNDATION

3.1 The College acknowledges, accepts, and supports the separate and independent nature of the Foundation, and the Foundation acknowledges and accepts the separate and independent nature of the College. Each agrees to cooperate with the other in the advancement, achievement, and support of the goals mutually agreed upon as set out herein.

3.2 The Foundation shall not use funds belonging to the College and managed by the Foundation on its behalf in any manner inconsistent with its stated statutory purpose.

3.3 The Foundation shall indemnify the College, its governing board, officers, employees, agents, and students in their official and personal capacities, from and against any and all claims, damages, liabilities, injuries, expenses, demands, and judgments, including court costs and attorney's fees, arising out of the Foundation's performance of this MOU or arising out of service by any such person or persons at the Foundation's request or on its behalf.

3.4 The College shall maintain at all times, at its sole cost and expense, a policy or policies of insurance for the benefit of the Foundation Board of Directors.

3.5 The College and the Foundation will cooperate with one another to generate revenues for the College resulting from the commercialization and licensing of intellectual property owned by the College and for other purposes that may be established upon mutual agreement for the Foundation and the College.

3.6 The Foundation will establish and maintain a conflict of interest and gift policy relating to its relationship with the College, members of the Board of Trustees and persons doing business with the Foundation.

3.7 The College and the Foundation shall hold periodic joint meetings to foster and maintain productive relationships and to ensure open and continuing communications and priorities. The College and the Foundation agree to review and amend this MOU, as needed, and at least every five years.

4.0 TERM

This MOU shall become effective once signed by all parties, and shall be in effect until June 30, 2016, at which time it shall automatically renew for additional one year successive terms. However, either party may terminate this MOU by providing the non-terminating party written notice of its intent to terminate the MOU no less than six months before the desired termination date.

The foregoing notwithstanding, this MOU will terminate automatically upon the dissolution of the Foundation, or should the Foundation cease to be 501(c)(3) non-profit corporation.

5.0 DISSOLUTION

It is the intent of the Foundation that it exist perpetually. In the event of dissolution of the Foundation, either voluntarily or involuntarily, all assets and property which remain after the discharge of the Foundation's liabilities and unless otherwise designated by the donor, shall be paid over or distributed by the Board of Directors directly to the College or to any other non-profit corporation or corporations organized to support the College, and shall be used or distributed for no other object or purpose whatsoever; provided however, that such organization must be exempt from federal income taxes under Section 501(d)(3) and 170(c)(2) of the IRS Code of 1954 or as amended, and not inconsistent with 55A-45, and be an associated entity approved by the College pursuant to regulations of the State Board of Community Colleges, and otherwise comply with Chapter 55A of the North Carolina General Statutes.

6.0 NOTICE

All notices provided for in this MOU shall be in writing and shall be given by letter or by facsimile (with subsequent confirmation) and shall be deemed received upon receipt if by facsimile or the next business day if by regular mail or overnight courier service. All notices provided for in this MOU shall be addressed to the parties as follows:

TO COLLEGE: BEAUFORT COUNTY COMMUNITY COLLEGE
Attn: President's Office
5337 US Hwy 264 East
Washington, NC 27889
Fax: (252) 946-0271

With copies to: BEAUFORT COUNTY COMMUNITY COLLEGE
Attn: Executive Director of Beaufort County
Community College Foundation
5377 US Hwy 264 East
Washington, NC 27889
Fax: (252) 946-0271

Ranee Singleton
Ranee Singleton, PLLC
P O Box 697
155 N. Market St, Suite 203
Washington, NC 27889
Fax: (252) 946-1961

TO FOUNDATION: Beaufort County Community College Foundation
Attn: Chairperson of the Foundation Board
5337 US Hwy 264 E
Washington, NC 27889
Fax: (252) 946-0271

Either party may, from time to time, by notice as herein provided, designate a different address to which notices shall be sent.

7.0 GOVERNING LAW

This MOU shall be construed under and governed by the laws of the State of North Carolina.

8.0 MISCELLANEOUS PROVISIONS


8.1 This MOU constitutes the entire agreement between the parties. Modifications, amendments or additions to this MOU, in order to be effective, must be in writing and signed by both parties. Inaction or failure to demand strict performance of the terms hereof shall not be deemed a waiver of any provision of this MOU. The contracting parties represent that each has the authority to execute this MOU, to enter into the transactions contemplated by this MOU and to perform its obligations under this MOU.


8.2 If any term, covenant or condition of this MOU or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this MOU, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this MOU shall be valid and be enforced to the fullest extent permitted by law.

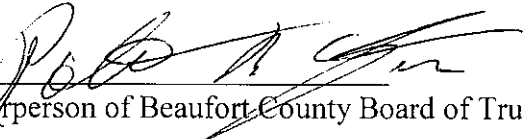
8.3 Except as otherwise provided herein, this MOU shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the undersigned parties through their authorized representatives have executed this MOU as of the day and year first above written.

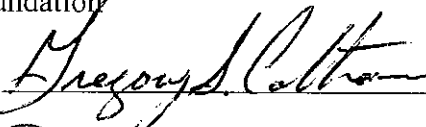
Beaufort County Community College

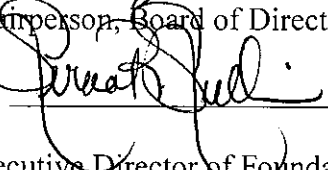
By: 
College President

By: 
Vice President of Administrative Services

By: 
Chairperson of Beaufort County Board of Trustees

Beaufort County Community College
Foundation

By: 
Chairperson, Board of Directors

By: 
Executive Director of Foundation