

MEMORANDUM OF UNDERSTANDING

Between the
Big Sandy Community and Technical College
and the
Big Sandy College Educational Foundation, Inc.

This Memorandum of Understanding (the “Memorandum”) is made and entered into this 29th day of October, 2004, by and between the Big Sandy College Educational Foundation, Inc., with an address of One Bert T. Combs Drive, Prestonsburg, KY 41653 (hereinafter the “Foundation”) and the Big Sandy Community and Technical College of the Kentucky Community and Technical College System {a governmental agency of the Commonwealth of Kentucky and an educational institution} with an address of 2624 Research Park Drive, Lexington, Kentucky 40512 (hereinafter “KCTCS”).

WITNESSETH:

WHEREAS, the Big Sandy Community and Technical College was created to improve the quality of life and employability of citizens in the Big Sandy area through comprehensive community and technical college postsecondary education programs, training, and services; and

WHEREAS, the support of the private sector is instrumental in achieving the vision, mission, and goals of the Big Sandy Community and Technical College; and

WHEREAS, the Big Sandy College Educational Foundation, Inc. will assist the Big Sandy Community and Technical College in attracting the support of individuals, corporations, foundations, and organizations who desire to advance the vision, mission, and goals of the Big Sandy Community and Technical College through voluntary efforts and philanthropic financial support, and

WHEREAS, the activities of the Foundation will advance the purposes of fundraising, advocacy, public relations, and the educational and community service goals of the Big Sandy Community and Technical College to benefit the students, faculty, staff, and the communities served by the Big Sandy Community and Technical College; and

WHEREAS, the Foundation qualifies for recognition as the official fund-raising arm of the Big Sandy Community and Technical College pursuant to the Policy for the Recognition of Independent Foundations adopted by the KCTCS Board of Regents on June 18, 1999 (hereinafter the “Policy”); and

WHEREAS, the Big Sandy Community and Technical College desires to assist the Foundation in the management and supervision of its activities by providing the Foundation access to certain employees and resources of the Big Sandy Community and Technical College; and

WHEREAS, because of the close association of the Foundation with the Big Sandy Community and Technical College it is prudent and beneficial to have a clear statement, agreed upon by the parties, of the responsibilities, authority, and the relationship of the Big Sandy Community and Technical College and its recognized Foundation;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt, mutuality and sufficiency all of which is hereby acknowledged by the parties hereto, the Foundation and Big Sandy Community and Technical College each agree as follows:

Section 1. Obligations of the Foundation.

- a.** The Foundation shall actively cooperate and assist the Big Sandy Community and Technical College in the implementation of private-sector fundraising appeals, campaigns, and events, public awareness activities, and advocacy efforts that enhance the mission, goals, and objectives of the Big Sandy Community and Technical College.
- b.** The Foundation shall solicit, receive, hold and invest funds, administer property, and make expenditures to support the programs, activities, and needs of the Big Sandy Community and Technical College. The Foundation may not engage in activities contrary to this objective. In addition, the acts, deeds, functions, and activities of the Foundation shall in no way conflict with the authority of the Big Sandy Community and Technical College. Nor shall the Foundation solicit or accept gifts for any use specified by a donor that is inconsistent with the mission, goals, and objectives of the Big Sandy Community and Technical College.
- c.** The Foundation agrees to abide by the Policy for the Recognition of Independent Foundations and any other applicable policies and guidelines of KCTCS as they may, from time to time, be adopted and amended. A copy of the presently effective Policy is attached and is incorporated herein by reference.
- d.** The books and records of the Foundation shall be kept in accordance with generally accepted accounting principles and shall be audited annually in accordance with generally accepted auditing standards by an independent professional auditor who shall furnish to KCTCS copies of the annual audit. Any audit findings, audit exceptions, or any misuse of funds shall be reported to the Foundation Board of Directors who shall maintain a written policy regarding the handling and resolution of such occurrences. A copy of this policy shall be provided to KCTCS. The Foundation shall take appropriate corrective action to remedy such occurrences.

- e. The Foundation agrees to transfer restricted funds, both current gifts and income from endowments, to the Big Sandy Community and Technical College in an expeditious manner when requested by the Big Sandy Community and Technical College for expenditure in accordance with the terms and conditions applicable to the particular funds.
- f. The Foundation shall indemnify and hold harmless the Big Sandy Community and Technical College from and against any liability, losses, claims, demands, costs, and expenses, including without limitation attorneys' fees and litigation expenses, arising out of any personal injury or property damage arising in connection with the activities of the Foundation.
- g. The Foundation, at its sole expense, shall maintain or provide adequate insurance in such forms and sums as the Foundation and the Big Sandy Community and Technical College agree are necessary.
- h. In the case that the Foundation is acting as depository for public funds, said funds shall be audited annually by an independent professional auditor in accordance with generally accepted auditing standards and other agreed upon procedures, if any, as required by KCTCS. The professional auditor shall furnish the Big Sandy Community and Technical College copies of the annual audit. All audit findings or exceptions involving public funds or the misuse of public funds shall be reported without delay to the KCTCS Board of Regents for appropriate action. The KCTCS Board of Regents may require specific corrective action as it deems necessary in order to protect the integrity of public funds held by the Foundation. KCTCS may also require the return of some or all public funds held by the Foundation. KCTCS may also require the return of some or all public funds on deposit with the Foundation.
- i. The Foundation shall reimburse the Big Sandy Community and Technical College for any reasonable expenditures made by the Big Sandy Community and Technical College for the benefit of the Foundation.

Section 2. Obligations of Big Sandy Community and Technical College

- a. The Big Sandy Community and Technical College recognizes the Foundation as a separate, independent, and private entity in accordance with the Policy and agrees that the Foundation's continued status as a recognized Foundation under the Policy shall continue as long as the Foundation complies with the requirements of the Policy

and other applicable policies and guidelines of the KCTCS as they may, from time to time, be adopted and amended.

- b.** The Chief Executive Officer (CEO) of the Big Sandy Community and Technical College will present to the Foundation on an annual basis a list of private funding priorities for which the Foundation will seek funds and a budget for the use of any portion of unrestricted funds which may be available for allocation to the Big Sandy Community and Technical College.
- c.** The Big Sandy Community and Technical College and the Foundation agree that all funds received will be expended in accordance with the respective KCTCS and Foundation policies, be supported by vouchers required by such policies, and in adherence with the general charitable purposes of the Foundation and in conformance with any restrictions imposed by the donor or the Foundation as to the use or purpose of the specific funds.
- d.** The CEO of the Big Sandy Community and Technical College shall assign the necessary duties and functions to appropriate Big Sandy Community and Technical College staff members in connection with this Memorandum. The Big Sandy Community and Technical College acknowledges that certain of its employees may, from time to time, also serve as members of the Foundation, and in such capacity are obliged to perform the duties of such positions, subject to the direction and control of the Foundation and its governing board, and not subject to the direction and control of Big Sandy Community and Technical College. The Big Sandy Community and Technical College agrees further that they will not instruct or in any way require their employees who serve as officers or members of the Foundation to take any action with respect to their duties as members, and will permit such employees to exercise their own judgment.
- e.** During the term of recognition, the Foundation shall be authorized to use the facilities, equipment, personnel, and services of the Big Sandy Community and Technical College in order to carry out its activities in support of the Big Sandy Community and Technical College subject to the prior approval of the CEO of the Big Sandy Community and Technical College. The Big Sandy Community and Technical College shall serve as the principal office for the Big Sandy College Educational Foundation, Inc. The Big Sandy Community and Technical College Development Officer will serve as the Foundation Executive Director.

- f. During the term of recognition as established by the guidelines, donors to the Foundation shall be acknowledged and recognized in the same manner and afforded the same privileges as donors to the Big Sandy Community and Technical College and KCTCS.

Section 3. Mutuality of Obligations.

- a. The parties agree that the obligations imposed upon the parties are for the benefits of the parties and that the timely fulfillment of each and every obligation in accordance with this Memorandum is necessary. The failure of any party to fulfill its obligations under this Memorandum or the failure of any event to occur by a date established by this Memorandum shall constitute a breach of this Memorandum unless the fulfillment of such obligation is waived or modified by written agreement of the parties.
- b. Except as may otherwise be provided herein, the parties to this Memorandum shall be solely responsible for any cost incurred in fulfilling their obligations under this Memorandum and no party shall have any claim against the other party for reimbursement of such cost whether or not a party is in default.

Section 4. Terms of Memorandum

- a. This Memorandum shall be effective as of the date first written above and shall terminate on the 1st day of December 2007.
- b. This Memorandum shall automatically renew for ten (10) additional terms of one (1) year each unless either party terminates this Memorandum by written notice thirty (30) days prior to the expiration of the current term.
- c. This Agreement may be terminated by either party for cause if not cured within thirty (30) days of receipt of written notice.

Section 5. Miscellaneous Provisions.

- a. This Memorandum may be signed by each party upon a separate copy, in such case one counterpart of this Memorandum shall consist of a sufficient number of such copies to reflect the signature of each party hereto. This Memorandum may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Memorandum or the terms and conditions hereof to produce or account for more than one of such counterparts.

- b.** The headings set forth in this Memorandum are for convenience or reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Memorandum.
- c.** The terms and conditions of this Memorandum shall be binding upon and shall inure to the benefit of the successor and assigns, respectively, of the parties. This provision shall not be construed to permit assignment by any party of its rights and duties under this Memorandum, which assignment shall be prohibited except with the prior written consent of all parties hereto.
- d.** This Memorandum sets fourth the entire understanding of the parties with respect to the subject matter hereof, supersedes all existing agreements among them concerning the subject matter hereof, and may be modified only by a written instrument duly executed by each of the parties hereto.
- e.** Time is of the essence in the performance of each of the terms and conditions of this Memorandum.
- f.** The parties agree that any suit, action or proceeding with respect to this Memorandum may only be brought in or entered by, as the case may be, the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky; or the United States District Court for the Eastern District of Kentucky, Frankfort Division.
- g.** All notices, requests, demands, waivers and other communications given as provided in this Memorandum shall be in writing, and shall be addressed as follows:

To the Foundation: Big Sandy College Educational Foundation, Inc.
Big Sandy Community and Technical College
One Bert T. Combs Drive
Prestonsburg, KY 41653
Attn: Institutional Advancement

To the Big Sandy Community and Technical College:
Big Sandy Community and Technical College
One Bert T. Combs Drive
Prestonsburg, KY 41653
Attn: Institutional Advancement

- h.** KCTCS may audit or review all documentation and records of the Foundation relating to its activities in connection with the KCTCS pursuant to the provisions of KRS 45A.150.
- i.** The parties agree that this Memorandum of Understanding is not entered into under the provisions of KRS 56.8161 et seq.