

## **AGREEMENT BETWEEN**

### **PELLISSIPPI STATE TECHNICAL COMMUNITY COLLEGE**

#### **AND**

### **PELLISSIPPI STATE TECHNICAL COMMUNITY COLLEGE FOUNDATION**

THIS AGREEMENT is made this 1st day of July, 2005 by and between Pellissippi State Technical Community College (hereinafter referred to as the "College"), and Pellissippi State Technical Community College Foundation (hereinafter referred to as the "Foundation").

The Foundation is a private, non-profit public benefit corporation existing by virtue of Tenn. Code Ann. 49-7-107 and Tenn. Code Ann. 48-51-101 *et seq.* (Tennessee Nonprofit Corporation Act), is tax-exempt under Section 501(c)(3) of Internal Revenue Code, and is organized to work in concert with the College. The Foundation is established by Charter and Bylaws dated May 20, 1982 and restated on November 4, 2003, and its purpose is as stated therein. As set forth by its charter, the Foundation's objectives are (1) to promote the cause of higher education and particularly the mission of the College; (2) to expand educational opportunities; and (3) to acquire, manage and administer Foundation funds to achieve those objectives. The Foundation is organized exclusively for charitable, educational purposes and is empowered to encourage, solicit, receive, manage, administer, control, invest, and disburse contributions, gifts, grants, bequests, and transfers of funds or property of any nature, and carry out the wishes of donors and see that property so received is applied to the uses specified by the donors.

The College is a public institution of higher education created by Tenn. Code Ann. 49-8-101 and governed by the Tennessee Board of Regents. The College is authorized to do all things it deems to be in the best interest of the College within the parameters of guidelines and policies established by the Tennessee Board of Regents and state and federal law and in accordance with its agreement with the Foundation.

#### **The parties hereby agree as follows:**

##### **I. Foundation powers, duties, and responsibilities**

1. The Foundation is run by an independent board of trustees and is independent of the College and the state. It is permissible for the Pellissippi State Technical Community College President to be a voting Foundation board member. No other college employees are members of the Board of Trustees
2. The Foundation's responsibilities shall include raising funds for the College. The College and the Foundation may share employees and services, including a database of information on donors. As used herein, the Foundation's "database of information" includes but is not limited to a compilation of contributors,

- prospects, alumni, friends, and supporters of the College. These records, as well as all other data, materials, and information of the Foundation pertaining to past, current, prospective donors are proprietary to the Foundation and constitutes its confidential information and trade secrets.
3. The Foundation may disclose confidential information from time to time to authorized College personnel for purposes of cooperative planning and implementation as authorized by the Foundation.
  4. The Foundation's responsibilities shall also include administration and management of the following:
    - a. **Trusts.** Legal devices used to set aside money or property belonging to one person or entity for the benefit of one or more persons or parties. Trust agreements transfer legal title but not ownership of the corpus to the trustee.
    - b. **Unrestricted gifts.** Assets or income unrestricted in terms of use, eligible recipients, or distribution procedures. A grant of unrestricted funds does not specifically stipulate how the money is to be spent by the grantee.
    - c. **Restricted gifts.** Assets or income restricted in terms of use, eligible recipients, or distribution procedures.
    - d. **Endowments.** Bequests or gifts intended to be kept permanently and invested to create income. All endowments shall be established with each donor by a Memorandum of Agreement or trust agreement. This ensures that the donor's intent is fully understood by the Foundation and College.
    - e. **In-kind contributions.** Donations of goods or services rather than cash.
    - f. **Foundation accounts.** Accounts containing Foundation funds, including scholarship accounts, endowments, investment accounts, and operating fund accounts.
  5. The Foundation shall be designated as an entity responsible for promoting and generating private sector support for the College.
  6. The Foundation shall assist the College and its departments in their fund raising activities, capital campaigns, and development programs with individuals, corporations, Foundations, and other organizations.
  7. As mutually agreed by the parties, the Foundation will perform other acts as may be deemed appropriate, consistent with the Foundation's mission and resources.
  8. **Income Tax Filing:** The Foundation shall file an annual form 990 listing organizational assets, receipts, expenditures and compensation of officers. IRS Form 990 is the annual "Return of Organization Exempt from Income Tax."

9. **Employment Taxes.** The Foundation may be legally required to file Form 941, "Employer's Quarterly Federal Tax Return." The Foundation shall file form 941 and be responsible for timely submission of all tax return forms it receives to College personnel. The parties acknowledge that no employment tax filing is required for any quarter in which the Foundation has no payroll or no employees.
10. **Miscellaneous Awards and fees.** The Foundation shall file form 1099-MISC reporting awards, fees, and similar payments that must be reported to IRS. This must be sent to the award recipient no later than January 31st, and to the IRS, with a Form 1096 transmittal, no later than February 28. .
11. **Investment and Management of Foundation funds.** The Foundation Board is vested with sole authority to invest and/or manage the Foundation's funds, including but not limited to cash, securities, and real estate, taking the form of trusts, endowments, restricted gifts, unrestricted gifts or otherwise.
12. **Collection of Donations.** The Foundation is responsible for the collection of donations for the College's charitable, scientific, and educational purposes.
13. **Additional Foundation authority.** The parties agree that the Foundation Board is empowered to:
  - a. Solicit gifts or assist the College in soliciting gifts from third persons in the name of the College and for the benefit of the College or any of the College's programs;
  - b. Solicit grants and contracts or accept grants;
  - c. Enter into contracts for services to be performed using the College's facilities and Foundation account funds;
  - d. Enter into contracts for goods or supplies using Foundation account funds; and
  - e. Authorize payment of bills or professional fees in the name of or in behalf of the Foundation.
14. No College or state funds shall be used by the Foundation for the Foundation's operation except as described in II.3 of this agreement, and no state funds will be transferred either directly or indirectly to the Foundation.
15. The Foundation shall implement a written, mandatory, document retention and periodic document destruction policy that complies with *Sarbanes-Oxley*, prohibiting document purging if an official investigation is underway or suspected. The policy shall include guidelines for handling electronic files, voice mail, and paper documents.

16. The Foundation shall adopt an ethics policy complying with P.L. 879-2853 (2004), Tenn. Code Ann. § 49-7-107, *as amended*, requiring that state college and university Foundations adopt a code of ethics.
17. **Use of College name/marks.** The Foundation may, in connection with its lawful business and activities, use the name of the College as well as the College's logo, seal, and other symbols and marks.
18. The Foundation shall not delegate the authority to use the College's name or marks without written approval of the College's president and shall not permit the College's name or marks to be used in connection with advertising of non-College or non-foundation products or services unless such use is consistent with policies of the College.
19. The Foundation agrees to cease using the College's name and marks in the event:
  - a. The Foundation dissolves;
  - b. The Foundation ceases to be a non-profit corporation or ceases to be recognized by the IRS as described in Section 501(c)(3) of the Internal Revenue Code; or
  - c. The Foundation or the College terminates this agreement.
20. The Foundation will be responsible for its own legal counsel.
21. With the assistance of College administrative personnel, the Foundation will create the Foundation's budget.
22. The Foundation agrees to comply with all executive orders, federal, state, and local rules, regulations, and laws applicable to similar non-profit corporations.

## **II. College powers, duties, and responsibilities.**

1. The College agrees to encourage and maintain the independence of the Foundation and, at the same time, foster the cooperative relationship between the College and Foundation.
2. College employees may:
  - a. Provide services within the scope of their employment with the College;
  - b. Serve as *ex officio* members of the Foundation's board of trustees or other governing structure;

- c. Review the financial records of the Foundation to determine that the Foundation is adequately capitalized for any activities undertaken in the name of, for the benefit of, or in conjunction with the College;
  - d. Request or require evidence satisfactory to the president or the president's designee of insurance or self-insurance adequate in form and amounts to cover foreseeable liability arising from activities undertaken in the name of, for the benefit of, or in conjunction with College;
  - e. Request periodic review of any written general agreement or memorandum of understanding between the College and the Foundation to ensure that it describes each party's responsibilities in a manner that makes it clear to third parties dealing with the cooperative organization that the organization is acting as a legal entity separate from the College; and
  - f. Take any action necessary to ensure that actions of the College's officials, faculty, staff, or employees pursuant to the relationship are consistent with policies established by the Board of Regents and the College regarding conflicts of interest, outside activities, and other matters.
3. In consideration of the services provided to the College by the Foundation and as set forth herein, the College shall assist the Foundation Board in the following:
- a. Provision of office space, telephones, computers, supplies, *et cetera*. These will be considered in-kind services from the College,
  - b. Provision of clerical and administrative support services through the College's Development Office, and
  - c. Provision of designated financial services including financial record keeping.

### **III. Mutual acknowledgements and obligations.**

1. Foundation funds shall be utilized in a manner consistent with the wishes of donors and the objectives of the Foundation.
2. The parties agree that investment and maintenance of Foundation funds will occur in accordance with the following principles:
  - a. If specified by the donor, the endowment principal account will be a permanent endowment that is invested and never expended. Funds expended for purposes set forth by the donor will be taken from interest and/or investment income. Unexpended interest and or investment income may be returned to the endowment to grow the corpus or allowed to

accumulate for future distribution or expenditure consistent with the donor's intent.

If, at any time in the future, in the sole discretion of the Foundation's Board (after written recommendation from the President of the College), it is determined that the purposes and/or needs for which the endowment was initially established no longer exist or are no longer applicable, the Foundation's Board shall have full authority to redirect the use of this Fund for the benefit of the College and/or its students in any manner which the Foundation's Board determines best reflect the original wishes of Donor(s).

- b. Each newly established endowment will be accompanied by a Memorandum of Agreement and/or other document (for example: a will) setting forth the donor's wishes and intent with respect to the funds. This Agreement is the legally binding document used to ensure that the money is properly stewarded and that the donor's wishes are met in the distribution of funds. Each agreement will be signed by the donor (or their legal representative) and the Foundation. All criteria for the distribution of the endowment's distributable earnings shall be delineated in the document and must reflect the donor's wishes.
  - c. Restricted funds, whether related to an endowment or not, will be spent only for the purposes intended by the donor both now and in the future.
3. **Termination.** Either party may terminate this agreement upon sixty days' notice.
4. **Term.** This agreement supersedes all previous agreements between the College and the Foundation. The term of this Agreement shall commence on the date first written below and expire on June 30, 2006. If neither party gives notice of termination prior to the June 30 expiration of the agreement, it will continue on a year-to-year basis. The fiscal year for the purposes of this agreement is July 1 to June 30. If terminated by either party, all funds, assets, data and information in the possession of the Foundation will be promptly transferred to the College.
5. **Effect of Agreement/Modification.** This agreement contains all the terms between the parties. It may be amended only in writing signed by legally authorized representatives of all parties.

APPROVED:

Pellissippi State Technical Community College Foundation

By: \_\_\_\_\_ /s/ \_\_\_\_\_  
Phyllis Driver  
Chair of the Board of Trustees  
Date 6/14/05

Pellissippi State Technical Community College

By: \_\_\_\_\_ /s/ \_\_\_\_\_  
Allen Edwards  
President of the College  
Date 6/17/05

ACKNOWLEDGED AND APPROVED:  
Tennessee Board of Regents

By: \_\_\_\_\_ /s/ \_\_\_\_\_  
Chancellor Charles Manning  
Tennessee Board of Regents  
Date 9/8/05