



## MOU between LCC and the LCC Foundation

### Memorandum of Understanding (MOU) Between Luna Community College (LCC) And the Luna Community College Foundation (LCCF)

This Agreement, entered into as of this 10th day of July 2020 is by and between Luna Community College (Hereinafter referred to as the “College”) and the Luna Community College Foundation (Hereinafter referred to as the “Foundation”).

The Foundation was organized and incorporated in 3<sup>rd</sup> day of September 1997 for the purpose of stimulating voluntary private support from individuals, corporations, foundations, and others for the benefit of the College.

The Foundation exists to raise and manage private resources that support the educational mission and priorities of the College, provide opportunities for students, and enhance institutional excellence in ways that would not be possible with state funds.

The Foundation is dedicated to assisting the College in the building of the endowment and in addressing through financial support, the long-term academic and other priorities of the College.

The Foundation will abide by its bylaws set forth by its members and as such, will be incorporated into this agreement.

In consideration of the mutual commitments herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

#### **I. Foundation Name, Seal and Logotype**

A. Consistent with its mission to advance the plans and objectives of the College, the Foundation is granted the use of the name Luna Community College Foundation and with the approval of the president may use the College’s logo and other identifying marks in the promotion of its business and activities. The Foundation Board may also select and approve a logo as its own identifying mark.

#### **II. Institution Governance**

A. The Board of Trustees of Luna Community College is responsible for overseeing the mission, leadership, and operations of the College.

B. The Board of Trustees of Luna Community College is responsible for setting priorities and long-term plans for the College.

C. The Board of Trustees of Luna Community College is legally responsible for the performance and oversight of all aspects of the College operations.



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### III. The Foundation's Relationship to the College

A. The Foundation is a separately incorporated §501(c)(3) organization created to raise, manage, distribute, and steward private resources to support the various educational missions of the College including its various campuses and is restricted in practice by §501(c)(3) policies and procedures.

B. The Foundation Board of Directors is responsible for the control and management of all assets of the Foundation including the prudent management of all gifts consistent with donor intent.

C. The Foundation's accounts and funds are maintained separate from those of the College. The Foundation maintains the identity of individually named funds through the application of Generally Accepted Accounting Principles and in accordance with the standards set forth in the American Institute of Certified Public Accountants Audits of Certain Non-Profit Corporations.

D. The Foundation is responsible for the performance and oversight of all aspects of its operations based upon a comprehensive set of bylaws that clearly address the Board's fiduciary responsibilities, including expectations of individual Board members based upon ethical guidelines and policies.

E. In consultation with the College, The Foundation is responsible, with and consultation by the President of the College, for the employment, compensation and appraisal of its employees, including the Foundations Executive Director.

F. The Foundation may earmark a portion of its unrestricted funds to a discretionary fund for the President of the College appropriate to presidential expenditures, per Foundation policy. All such expenditures must comply with §501(c)(3) of the Internal Revenue Code, as amended and be consistent with the Foundation's mission. Such funds will be audited as a part of the Foundation's annual independent audit.

G. In consideration for Foundation services, including but not limited to soliciting cash, securities, real, personal, and intellectual property, and other private resources for the securities, real, personal, and intellectual property, and other private resources for the support of the College; acknowledging and stewarding gifts in accordance with donor intent and its fiduciary responsibilities; housing the alumni records and database on the Foundation's database; and the investment of gifts and endowments, the College agrees that as fair and reasonable compensation or payment for said services the college will provide in-kind support as outlined in section IV.E.

### IV. The College's Relationship to the Foundation

A. The President of the College is responsible for communicating the College's priorities and plans (strategic plans) to the Foundation Board of Directors. At the discretion of the College President, the Executive Director and Board representative of the Foundation shall be included on the Strategic Planning Committee for the College.

B. The College recognizes that the Foundation is a private corporation with the responsibility to protect the confidentiality of its donors consistent with the law.



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C. The President of the College shall serve as an ex-officio member of the Foundation Board without a vote and shall assume a prominent role in fund-raising activities.

D. At the discretion of the College President, the Executive Director of the Foundation shall be included, as needed, as a member of the College's senior administrative team, permanent or ad hoc committee.

E. In consideration for Foundation services as outlined in section III.G, the college will provide in-kind support as follows;

a. Telephone. Except as provided in the paragraph denominated Office Space (section E. d.), the College shall provide telephone service to the Foundation.

b. Computing. The College shall allow the Foundation to have reasonable access and use, without charge, software, internet, networks or file and print servers, necessary to the Foundation, in the discharge of its duties and obligations described in this Agreement. The Foundation shall purchase and maintain any application server, business application, and maintenance cost of such computing needs not utilized by the institution. The Foundation agrees to maintain confidentially as required by law with respect to electronic information. The College will assist with providing computing (data to be backed up daily), technology equipment and support to the Foundation.

c. Mail Services. The College shall permit the Foundation to have access to the College's internal mail service. Postage and outgoing mail costs shall be paid by the Foundation.

d. Office Space. The College will provide the Foundation with the adequate office and meeting space to conduct its operations, conducive to providing a professional fund raising atmosphere. The space shall include office furniture and janitorial services and additional storage space for records. Such support is provided by the College in consideration of the significant fiscal support provided by the Foundation to the College and its students. This support will be recognized as in-kind contribution in the Foundation's annual audit.

e. Other Property and Services. For other property and services provided by the College to the Foundation which are not offset or are not provided as part of the consideration hereunder, the Foundation shall be billed on a monthly basis for the cost to College of providing such property and services, and shall pay such bills within thirty (30) days of the date of billing. The parties agree that the nature of the services being acquired by the Foundation is not readily obtainable or convenient from its own resources or from outside private entities.



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f. College Records. To the extent permitted by law, the College agrees to permit the Foundation to have access to relevant information in its records regarding students, alumni, parents of students, employees, friends, and supporters of the College, and other appropriate persons as may be necessary to enable the Foundation to perform its obligations under this agreement. The Foundation agrees to maintain confidentially as required by law with respect to such information.

F. The College shall comply with all privacy acts (i.e., FERPA, etc.) that support the Foundation's ability to protect the confidentiality of donor records. All information about donors, prospective donors, gift data, campaign assignments and notes, donor correspondence, and related information is the confidential property of the Foundation, whether maintained in paper or electronic form, or maintained on servers and equipment owned by the College, in accordance with the laws of the State of New Mexico. "and cannot be used without the written permission of the Foundation.

### V. Foundation Responsibilities

- A. The Foundation shall create an environment conducive to increasing levels of private support for the mission and the priorities set by the Foundation, but based on the written needs of the College.
- B. The Executive Director of the Foundation, although listed on the College directory and organizational chart, reports directly to the Foundation's governing body and is under the direction and control of the Foundation governing board.
- C. The Foundation, in consultation with the President of the College, is responsible for planning, executing, and maintaining a comprehensive strategic fund-raising and donor-acquisition program (including capital fund-raising) in support of the College's mission.
- D. The Foundation will establish, adhere to, and periodically assess its expenditure and gift-management and acceptance policies. It will promptly acknowledge and issue receipts for all gifts on behalf of the Foundation and the College and provide appropriate recognition and stewardship of such gifts.
- E. The Foundation is recognized as the major fund-raising entity for the College. College representatives (including student organizations) will inform and coordinate with the Foundation on all known fund-raising initiatives including all gift solicitations.
- F. The leadership of the Foundation Board and the Executive Director will work in conjunction with the President of the College to identify, cultivate, and solicit prospects for private gifts. They will create, manage, train, and report on active fund-raising campaigns with specific goals and milestones.
- G. The College, not the Foundation, shall accept grants from state or federal agencies unless there are special circumstances, which are approved by the College, the Foundation Board, and the



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government agency. Said approval by the Foundation may be by general resolution not specific to each grant.

H. The Foundation shall routinely accept gifts-in-kind for College use. The Foundation shall also accept gifts-in-kind intended for the Foundation use. The Foundation will retain ownership of all gifts-in-kind valued at - \$ 10,000.00 and more unless otherwise designated by the Foundation Board.

### VI. Asset Management

A. The Foundation will establish asset-allocation, disbursements, and spending policies that adhere to applicable federal and state laws including the Uniform Prudent Investor Act (UPIA) and the Uniform Management of Institutional Funds Act (UMIFA).

B. The Foundation will receive, hold, manage, invest, and disburse contributions, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred gift instruments.

C. The Foundation shall not accept any gift, donation, or grant which creates a future liability for the College without the advance written approval of the President of the College.

D. Jointly with the College, the Foundation will engage an independent accounting firm to conduct an annual audit of the Foundation's financial statements, including management letters. The final report shall be delivered each year by the date as specified by the college in order to meet its audit requirement.

E. The Foundation will engage the services of a certified public accountant to monitor and assist with bookkeeping and accounting functions and provide quarterly reports to it Board and the Colleges Board of Trustees.

F. The Foundation will engage the services of legal counsel for the review of contracts and other legal issues as necessary.

G. The Foundation will maintain general liability, directors', and officers', employees' errors and omissions, and such other insurance coverage as may be necessary or appropriate for liabilities which may arise in connection with its operations and carry bonding insurance on all employees.

H. When distributing funds to the College, the Foundation will disclose any terms, conditions, or limitations imposed by the donor or legal determination of the gift. The College will abide by such restrictions and provide appropriate documentation when required.

I. The Foundation is the primary depository of private gifts and will transfer to the designated entity after the institution's substantial compliance with donor intent, College policy, and applicable laws.



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J. The Foundation's disbursements on behalf of the College must be reasonable expenses that substantially support the institution and its mission, are consistent with donor intent, and do not conflict with the law.

K. The Foundation shall provide the College the Policies and Procedures detailing the processes governing each aspect of Asset Management which shall be part of this MOU (Appendix A)

### **VII. Institutional Flexibility**

A. The Foundation will explore current opportunities including acquisition and management of real estate on behalf of the College for future allocation, transfer, or use.

B. 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 College expansion such as student housing.

### **VIII. Transfer of Funds**

A. The Foundation is the primary depository of private gifts and will transfer funds to the specific designated entity within the institution in compliance with applicable laws, college policies and procedures, and gift agreements.

B. The Foundation's disbursements on behalf of the College must be reasonable business expenses that support the institution, are consistent with donor intent, and do not conflict with the law.

### **IX. Foundation Funding and Administration**

A. The Foundation is responsible for establishing a financial plan to underwrite a portion of its operational costs, programs, and activities, to be established and made part of future MOUs.

B. The Foundation has the right to use a reasonable percentage of annual unrestricted funds, interest, or endowments (by donor agreement), and earned interest on unrestricted investments to supports its operations. The Foundation determines what is a "reasonable percentage."

C. The Foundation will provide access to data and records to the College on a need-to-know basis in accordance with applicable laws, foundation policies and procedures, and guidelines.

D. As long as privacy is not violated, the Foundation will issue to the College, donors, and the community an annual report of its revenue, expenditures, programs, and activities.



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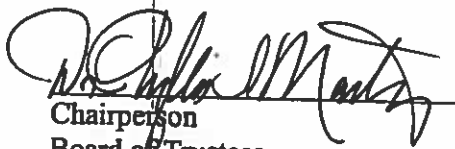
X. Terms of the Memorandum of Understanding (MOU)

A. Either party may, upon 90 days prior written notice to the other, terminate this agreement. Notwithstanding the foregoing, either party may terminate this MOU in the event the other party defaults in the performance of its obligations and fails to cure the default within a reasonable time after receiving written show cause notice.

B. In the event that the Foundation ceases to exist, all monies and items of value received by or held by the Foundation for the benefit of the College or any of its constituent parts shall immediately be transferred to the College or a designee consistent with federal and state law and such restrictions as may have been imposed by donors.

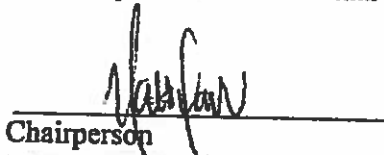
C. This MOU will be effective as of the day and date first written above. However, from time to time and for certain circumstances such as the appointment of a new College president, changes in state rules governing the college and its relationship with the Foundation, re-locations, etc., this MOU may/will be timely reviewed, updated, modified accordingly and approved by the College and the Foundation Board of Directors.

IN WITNESS THEREOF, the parties have caused this Memorandum of Understanding to be executed by their duly authorized officers as of the day and date of the final signature below.



Chairperson  
Board of Trustees  
Luna Community College

Date: \_\_\_\_\_



Chairperson  
Board of Directors  
Luna Community College Foundation

Date: 7-10-20



President  
Luna Community College

Date: 7/13/2020



Treasurer  
Luna Community College Foundation

Date: 7/13/20

