

Sauk Valley Community College
March 22, 2021

Action Item 4.9

Topic: **Fund Transfer Agreement**

Strategic Direction: **Identify and remediate barriers to student access**

Presented by: **Dr. David Hellmich, Dr. Lori Cortez, and Kent Sorenson**

Presentation:

The College and the Foundation entered into a Gift Transfer Agreement on October 14, 2014, whereby the College transferred approximately \$1.9 million of Challenge Funds to the Foundation for the purpose of investing these funds in accordance with the Foundation's Investment Policy. This agreement allowed the Foundation to manage and utilize the investment proceeds from said Funds while the College retained essential control over the original corpus.

The College and Foundation wish to enter into an agreement whereby the College will transfer ownership and control of the Funds, \$1.9 million, to the Foundation for the purpose of investing in the Impact Program. The Foundation agrees that the Funds shall be managed and invested solely for educational purposes in support of the College, in accordance with the Foundation's Investment Policy objectives of preserving the principal while providing a stable source of perpetual financial support through income generation.

By relinquishing control over these Funds, the College will no longer report these Funds as an asset for auditing and tax purposes. By accepting assignment and transfer of these Funds, the Foundation will no longer report these Funds as a liability, but rather as an asset for auditing and tax purposes. In reporting such Funds, the Foundation agrees to designate the same as a restricted gift.

Recommendation:

The administration recommends the Board approve the attached Fund Transfer Agreement between Sauk Valley Community College and the Sauk Valley College Foundation.

**FUND TRANSFER AGREEMENT BETWEEN
SAUK VALLEY COMMUNITY COLLEGE AND
SAUK VALLEY COLLEGE FOUNDATION**

WHEREAS, Sauk Valley Community College District No. 506, counties of Bureau, Henry, Lee, Ogle, Carroll and Whiteside, State of Illinois (“College”), is an Illinois community college established pursuant to the laws of the State of Illinois; and

WHEREAS, Sauk Valley College Foundation (“Foundation”) is an Illinois Not-for-Profit Corporation and is tax exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, the College was previously a recipient of Challenge Grant Funds from the United States Department of Education (Funds) that permitted the College to provide assistance to students; and

WHEREAS, the College, with Assistance of the Foundation duly invested the Funds in a manner that has allowed the principal and accumulated earnings to reach a total of \$2,482,682.41; and

WHEREAS, the College and the Foundation previously entered into a Gift Transfer Agreement on October 14, 2014 (“Agreement”) whereby the College transferred approximately \$1.9 million of the Funds to the Foundation for the purpose of investing these funds in accordance with the Foundation’s Investment Policy.

WHEREAS, said Agreement allowed the Foundation to manage and utilize the investment proceeds from said Funds while the College retained essential control over the original corpus, including the authority to direct the Foundation to make prompt return of said Funds by written direction; and

WHEREAS, Article VII, Section 10 of the 1970 State of Illinois Constitution authorizes units of local government, such as the College to enter into agreements with corporations, including non-profit organizations, in any manner not prohibited by law or ordinance; and

WHEREAS, the Foundation is working to implement an Impact Program (“Program”) that will benefit the College and Sauk valley community by providing up to three years of earned tuition income for all College students; and

WHEREAS, as part of this endeavor, the Foundation will need to raise and invest approximately \$10 million to cover the tuition costs for said students; and

WHEREAS, the Board of Trustee of the College are in support of the Program and its potential benefit to the College students and Sauk valley community; and

WHEREAS, as a show of support, the College and Foundation wish to enter into an agreement whereby the College will transfer ownership and control of the Funds, e.g. \$1.9 million, to the Foundation for the purpose of investing in the Impact Program in accordance with the terms and conditions outlined herein.

NOW, THEREFORE, ITS IS AGREED:

1. Transfer to Foundation. The College assigns and formally relinquishes ownership, possession and control over the \$1.9 million of the designated Challenge Grant Funds, currently in the Foundation's possession effective as of the date of this agreement. The Board President and Treasurer of the College are authorized to execute all documents necessary to effectuate the transfer and to take all steps necessary to effectuate the same.

2. Foundation Duties. The Foundation agrees that the Funds shall be managed and invested solely for educational purposes in support of the College, in accordance with the Foundation's Investment Policy objectives of preserving the principal while providing a stable source of perpetual financial support through income generation. The Foundation agrees to designate these Funds as "restricted" and to refrain from any action to pledge, mortgage, hypothecate, or otherwise transfer the Funds, other than as necessary to effectuate the purpose of the Impact Program. The Foundation further agrees to:

- (a) Report to the Board of Trustees, not less than annually, the status of all Funds;
- (b) Take all steps necessary to designate the Funds as restricted, to prevent any assertion of lien or security interest claim on the Funds by third parties;
- (c) Take all steps necessary to make sure the Funds are qualified as collateralized deposits to be properly insured from loss, e.g. FDIC coverage or other fiscally responsible methods of covering the same.

3. Accounting. By relinquishing control over these Funds, the College will no longer report these Funds as an asset for auditing and tax purposes. By accepting assignment and transfer of these Funds, the Foundation will no longer report these Funds as a liability, but rather as an asset for auditing and tax purposes. In reporting such Funds, the Foundation agrees to designate the same as a restricted gift.

4. Dissolution of Foundation. In the event of the anticipated liquidation, bankruptcy, or dissolution of the Foundation, but prior to actual dissolution, the Funds then in possession and under the control of the Foundation shall be returned to the College or shall be transferred to such entity as the Board of Trustees of the College shall direct.

5. Compliance with Law. In accepting this gift, the Foundation shall at all times act as pursuant to applicable law and shall hold the College totally harmless for any and all losses, costs and expenses arising from failure to comply with the law.

6. Savings Clause. In the event this Agreement, or any portion hereof, is contrary to law, then the Agreement or portion thereof shall be deemed void and of no force or effect, and the parties shall promptly take all reasonable steps necessary to affect the correct status. If Clause 1

hereof is held to be contrary to law or is otherwise void, then this Agreement shall be deemed null and void, and all Funds shall be returned to the College.

7. Effective Date. This Agreement is deemed to have been in full force and effect on and after July 1, 2021 and shall result in termination of any further responsibility of the Parties pursuant to the Gift Transfer Agreement between Sauk Valley Community College and the Sauk Valley College Foundation signed and approved October 14, 2014.

8. Notice of Event. The Foundation agrees to notify the College, within five (5) working days of any claim asserted that could result in the liquidation or dissolution of the Foundation or in any manner impair the Funds.

SAUK VALLEY COMMUNITY COLLEGE

SAUK VALLEY COLLEGE FOUNDATION

By _____
Chairman, Board of Trustees

By _____
Board Chair

By _____
President