

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) entered into this June ____, 2019, between Western Kentucky University, 1906 College Heights Blvd., Bowling Green, Kentucky (“WKU.”), and Simpson County Board of Education, 430 South College Street, Franklin, KY 42134 (SCBOE).

Recitals

WHEREAS, WKU acted as a host institution for the former Confucius Institute at Western Kentucky University (the “CI at WKU”) pursuant to that certain *Agreement Between Confucius Institute Headquarters of China and Western Kentucky University of the United States on the Establishment of Confucius Institute at Western Kentucky University* executed in February 2010; and

WHEREAS, WKU terminated the foregoing Agreement on April 22, 2019, as a result a force majeure cause beyond the control of the parties that rendered the performance of the Agreement impossible; and,

WHEREAS, in the course of the performance of said Agreement, WKU received and is in current possession of assets of it’s the Confucius Institute established at WKU, including the cash deposits and physical assets described in more detail in Appendix A and Appendix B attached hereto; and

WHEREAS, the SCBOE is has agreed to act as a the host institution for the Confucius Institute of Western Kentucky (the “CI of Western Kentucky”), a new Confucius Institute program to be established pursuant to that certain *Agreement Between Confucius Institute Headquarters of China and Simpson County Kentucky Board of Education (“SCBOE”) of the United States on the Establishment of the Confucius Institute of Western Kentucky*; and

WHEREAS, given WKU is no longer acting as a host institution, WKU is agreeable to ~~desires~~ transferring the assets of its Confucius Institute to the Confucius Institute of Western Kentucky hosted by the SCBOE; and

WHEREAS, WKU and the SCBOE desire to enter into this Memorandum of Understanding (the “MOU”) to establish the terms and conditions for the transfer of assets from the CI at WKU to the CI of Western Kentucky;

NOW, THEREFORE, in consideration of the matters described hereinabove, and of the mutual benefits and obligations set forth in this MOU, the parties agree as follows:

1. Obligations by SBOE. SCBOE agrees to enter into an agreement between Hanban/CIHQ for the establishment of a new, independent Confucius Institute of Western Kentucky, and to accept the transfer of assets from the former CI at WKU.
2. Obligations by WKU. Upon receiving the fully executed contract between SCBOE and Hanban/CIHQ, WKU shall take any and all necessary action, including the

execution of documents, to perform the following:

(a) Transfer by wire or other means acceptable to the SCBOE all cash accounts currently held by WKU for the former CI at WKU, including, without limitation, Confucius Classroom funds in the amount of \$192,714.25 (See Appendix A);

(b) Transfer any and all vehicles, including, without limitation, the food truck and recreational vehicle (“RV”) provided for the operation of the former CI at WKU (See Appendix B);

(c) Transfer any and all teaching materials, courseware, books, and audio-visual materials provided for the operation of the former CI at WKU (See Appendix B); and

(d) Transfer any and all other assets provided for the operation of the former CI at WKU (See Appendix B).

3. No Merger or Successor in Interest. This MOU is intended only to memorialize the transfer of assets from the former Confucius Institute at Western Kentucky University hosted by WKU to the Confucius Institute of Western Kentucky hosted by the SCBOE, ~~but~~ and is not a *de facto* merger of the entities. The Confucius Institute at Western Kentucky University has ceased all operations, and neither the Confucius Institute of Western Kentucky nor the SBOE is/are successors in interest to the former CI at WKU or WKU. The SCBOE shall not assume or become liable for any debts, liabilities, or obligations of any kind related to or arising from the *Agreement Between Confucius Institute Headquarters of China and Western Kentucky University of the United States on the Establishment of Confucius Institute at Western Kentucky University* executed in February 2010, including those existing as of the date of execution of this MOU or thereafter arising. WKU shall not assume or become liable for any debts, liabilities, or obligations of any kind of the CI of Western Kentucky or the SCBOE existing as of the date of execution of this MOU or thereafter arising.

4. Indemnification. WKU, is an agency and instrumentality of the Commonwealth of Kentucky, and any and all claims against or disputes with the Commonwealth of Kentucky, including WKU or its employees, must be brought pursuant to the provisions of the Kentucky Revised Statutes. Neither party shall be responsible for damage or loss to the other except that which

results from its own negligence or the negligence of its employees or others for whom the party is legally responsible.

5. Approval. Each party hereto represents to the other that it is duly organized, validly existing, and in good standing under the laws of the Commonwealth of Kentucky; that it has the corporate power and authority to enter into this MOU; that the execution, delivery, and performance of this MOU has been duly authorized by all necessary corporate action; and that the undersigned signatory agent has the full right and power to execute and perform this MOU on behalf of each respective party.

6. Independent Entities. The parties hereto shall remain independent entities, and nothing in this MOU shall be construed as creating an employment, agency or representative relationship, or any form of legal entity or business enterprise between the parties. The parties expressly do not intend to form a partnership under either the Uniform Partnership Act nor the Uniform Limited Partnership Act of the Commonwealth of Kentucky. The parties do not intend to be partners one to another, or partners as to any third party. Nothing in this MOU will permit either party to act as an agent for the other party.

7. Entirety. This MOU constitutes the entire, full and complete agreement between the parties hereto concerning the subject matter hereof, and supersedes all prior agreements with no other representations having induced either party to execute this MOU. No amendment, change or variance from this MOU shall be binding on the parties hereto unless mutually agreed to by the parties and executed by the authorized officers or agents in writing.

8. Governing Law. This MOU shall be interpreted and construed under the laws of the Commonwealth of Kentucky.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this MOU on the day and year first above written.

**Simpson County Board of Education
(SCBOE)**

**Western Kentucky University
(WKU)**

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

Appendix A – Financial Confucius Classroom Commitment

Confucius Classroom Balance

	Balance
Butler County	\$15,154.00
Barren County	\$9,247.75
Central City	\$10,000.00
South Middle	\$10,000.00
Housing Authority of Bowling Green	\$10,000.00
Logan County	\$14,904.92
Hardin County	\$18,357.52
Cloverport	\$10,000.00
BGIS	\$10,000.00
Boyle County	\$10,000.00
St. Francis School (2 Classrooms)	\$13,472.19
Trinity High School	\$10,000.00
Field Elementary	\$7,185.79
Owensboro/Daviess County	\$10,000.00
Simpson County	\$5,548.39
Gatton Academy	\$10,000.00
Holy Trinity Lutheran School	\$18,843.69

Expenses

\$192,714.25

Appendix B – Assets to Transfer

Storage Container Inventory List

Office Furniture & Artifacts

	Location	Building
3 - Hardwood (L-shaped Desks)	RM#117, 119, 120	Model CI
3 - Tall Backed Wooden Chairs	RM#117, 119, 120	Model CI
2 Round Back Wooden Chairs	RM#117	Model CI
4 Round Back Wooden Chairs	Exhibit Area	Model CI
2 Life Sized Terracotta Soldiers	CEC	Helm
Musical Instruments (Guzheng, 5 flutes, Bian Zhong, erhu, etc...)	CEC	Helm
Couch & Coffee Table	CLC	Model CI
5 - Slender Wooden Tea Tables	CLC	Model CI
4 - Glass Hexagon Cases	CEC	Helm
4 - Wooden Plexi-Glass Cases	CEC	Helm
5 - Minority Dress Shadow Cases	CEC/CLC	Helm/Model CI
11 - Wooden Bookshelf Cases	CLC	Model CI
2 Toshiba Printers	RM#116, 105	Model CI
1 Conference Table & 8 chairs	RM#105	Model CI
Confucius Bust & Stand	Exhibit Area	Model CI
3 - Full Desks (American Style)	CLC	Model CI
3 Library Bookshelves of Chinese books	CEC	Helm
Confucius Institute Plaque & Model CI Plaque	CLC	Model CI
Conference Table & (8) Chairs	RM#116, 105	Model CI
Various Books & Teaching Materials	ICSET Storage	CRD
32 - 34" Wooden Lazy Susan Tables	ICSET Storage	CRD
Wire Storage Racks (5)	CLC	Model CI
Paintings (256 pieces)	ICSET Storage	ICSET

Vehicle Transfer List

Vehicles

	Location
2010 Dodge Caravan (Wrapped)	CRD
2011 Dodge Caravan (Wrapped)	CRD
2013 Dodge Caravan (Wrapped)	CRD
2014 Best Built Food Trailer Discover RV (Mobile Unit)	CRD

Computer & Printer Transfer List

Computers & Printers

	Location
Copy Machine (4004927)	Surplus
Dell Laptop (5006418)	CRD
Dell Laptop (5006419)	CRD
Dell Laptop (5006463)	CRD
Optiplex Desktop (5005555)	CRD
Optiplex Desktop (5005556)	Surplus
Optiplex Desktop (5006624)	Surplus
Optiplex Desktop (5006623)	Surplus
Optiplex Desktop (5006622)	Surplus
iMac 21.5 inch (4005793)	Surplus
PowerEdge T630 Tower (56657)	CRD
Copy Machine (202773)	Surplus