

**MEMORANDUM OF UNDERSTANDING**  
**between**  
**EASTERN WASHINGTON UNIVERSITY**  
**and**  
**EASTERN WASHINGTON UNIVERSITY FOUNDATION**

This Memorandum of Understanding is entered into by and between **Eastern Washington University** (the "University"), an institution of higher learning and an agency of the State of Washington, and **Eastern Washington University Foundation** (the "Foundation"), a Washington nonprofit corporation and tax exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended ("Code"). The University and the Foundation may be collectively referred to herein as the "Parties", and individually as a "Party".

**Recitals**

WHEREAS, the University is a regionally based, comprehensive university located at Cheney, Washington, providing undergraduate and graduate education since 1882;

WHEREAS, the Foundation was organized and incorporated in 1977 for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, foundations, and other associations for the benefit of the University. The Foundation is a tax-exempt organization under Section 501(c)(3) of the Code, a public charity under Sections 509(a)(1) and 170(b)(1)(A)(iv) of the Code, and a public benefit corporation under RCW Section 24.03.005(17);

WHEREAS, the Foundation exists to raise and manage private resources to support the mission, goals and priorities of the University, to provide educational opportunities for the students of the University, and to establish a margin of institutional excellence unattainable with state and federal funds alone;

WHEREAS, the Foundation provides specialized professional expertise to donors and friends of the University in gift planning and solicitation, and stewards the gifted assets in accordance with donor intent and fiduciary duties;

WHEREAS, the University recognizes the Foundation as an organization to plan, initiate, direct and coordinate all possible development efforts in pursuit of gift support from private sources;

WHEREAS, the Parties acknowledge that they are independent entities, separately governed and legislated, and recognize that close collaboration and cooperation are essential to attain their respective missions, and to avoid competition for funds or unproductive duplication of effort;

WHEREAS, from 1997 until 2009, the University and Foundation conducted their respective business and affairs under that certain Agreement of Services, dated June 24, 1997; and

WHEREAS, since 2009, the University and Foundation have conducted their respective business and affairs under that certain Memorandum of Understanding, dated June 25, 2009, and both Parties now desire to revise, update, and replace said prior agreement, with this Memorandum of Understanding ("Agreement").

**AGREEMENT**

**NOW, THEREFORE**, the Parties agree as follows:

**A. Foundation's Role and Responsibilities**

The Foundation shall:

1. Exercise best efforts to secure gifts, grants, conveyances, devises, and bequests of money and real and personal property for the benefit of the University. For this purpose, it will design and implement programs and procedures approved by the University to solicit and receive such money and property and also to acquire such property by purchase, lease, and exchange or otherwise, all to further the purposes of the Foundation which benefit the University. The Foundation shall, in partnership with University Administration, primarily the Office of the President and the Office of University Advancement, plan, direct, coordinate, and conduct fundraising from private sources, including:

- a. Annual giving program;
- b. Major gift program;
- c. Planned giving program;
- d. Athletic fundraising campaigns; and
- e. Campaigns, comprehensive or limited, for purposes determined in partnership with University administration and the Foundation's governing board.

2. Communicate and coordinate activities with the University through the Office of University Advancement. The activities of the Foundation are to be conducted for the benefit of the University and shall be consistent with the University's academic plans and strategic initiatives. The Foundation shall:

- a. Solicit or accept gifts, grants, conveyances, devises, bequests, or otherwise from any source for a use specified by the donor, provided they are consistent with the University's mission and vision;
- b. Provide expertise and assistance to the University administration, faculty, staff, and various University constituents on development and fund raising projects;
- c. Conduct public information and publication programs in support of its development efforts and fund raising;
- d. Engage in solicitation activities which include mailings, events, programs and activities for the University; and
- e. Process, acknowledge, and accept all gifts and charitable sponsorships from private sources.

3. Maintain a prospect research and donor relations database system, and provide restricted access to the EWU Alumni Association and EWU Alumni Relations

office and other University departments in accordance with applicable law and the policies and guidelines of the Foundation. The Foundation will make every reasonable effort to protect these systems and the data stored in them. All records, notes, documents, and lists generated by the Foundation and relating to donors or prospective donors, shall be considered confidential and proprietary information of the Foundation.

4. Comply with all applicable federal and state laws. For this purpose, the Foundation will establish rules and procedures for managing its business and affairs in accordance with (a) the requirements for tax-exempt organizations under the Code, including Section 501(c)(3) of the Code, and (b) the laws of the State of Washington including, but not limited to, those governing nonprofit corporations (RCW Chapter 24.03), charitable solicitations (RCW Chapter 19.09), investment of trust assets (RCW Chapter 11.100) and management of institutional funds (RCW Chapter 24.55).

5. Engage a reputable independent accounting firm to periodically conduct an audit of its financial statements, operations and practices.

6. Tender to the University all gifts and donations received wherein the University is designated as recipient, and properly account and be responsible for all donations which designate the Foundation as recipient.

7. Accept, hold, administer, invest and disburse such funds and properties of any kind or character as from time to time may be given to it, in accordance with the terms of such gift, provided, however, that any restricted or conditional gift which in any way obligates the University shall not be accepted by the Foundation without the prior written consent of the University President or other University office specifically delegated with written authority to approve such gifts on behalf of the University.

8. Make contributions, grants, gifts, and transfers of property, both real and personal, either outright or in trust, to or for the benefit of the University.

9. Use all assets and earnings of the Foundation for the benefit of the University, for any and all lawful purposes permitted by the laws and regulations governing tax-exempt organizations at that time, and for payment of necessary and reasonable administrative expenses of the Foundation. No part of any assets and earnings shall accrue to the benefit of any director, officer, member or employee of the Foundation or any other individual, except for appropriate payment of reasonable compensation for services actually rendered or reimbursement of reasonable expenses necessarily incurred. No assets or earnings will be used for purposes that conflict with or do not further the University's priorities, long-term plans, or strategic initiatives.

10. Develop a multi-year plan which sets forth the anticipated levels of funding commitment of the Foundation. The plan shall be updated annually, and provided to the University no later than November 1<sup>st</sup> of each year.

11. Confirm with the University (i) that the Foundation has fully complied with its obligations to exercise best efforts to secure gifts, grants, donations and

endowments for the benefit of the University; and (ii) that the Foundation has used all of its assets and earnings for the exclusive benefit of the University or the payment of necessary and reasonable administrative expenses of the Foundation. For this purpose, the Foundation will list its accomplishments for the preceding year and share with the University its revenue and expense statements for the preceding year and its end-of-year balance sheet. The financial statements of the Foundation shall be provided to the University no later than November 1<sup>st</sup> of each year.

12. Coordinate with the University President or designee to review and approve the annual budget, as outlined in Section B.6.b below, and to annually review a post-closing summary of the transactions between the two Parties, as outlined in Section B.6.b below.

13. Not merge, consolidate, amend, or restate the Foundation's Articles of Incorporation or Bylaws without prior consultation with the University. If, after this consultation, the University and the Foundation cannot agree on the proposed changes to the Articles of Incorporation or Bylaws, the Parties shall utilize the dispute resolution process in Section D.5 below in an attempt to come to an agreement. If, after the process in Section D.5 is exhausted, the Parties cannot agree on the changes, the Foundation may complete the process of adopting the changes. The University reserves the right to terminate this Agreement immediately if it finds any such changes unacceptable.

14. Cooperate fully with any request for review of the Foundation financial records for the sole purpose of ensuring compliance with this Agreement, including permitting the University President or designee to inspect and copy financial records.

15. Act as fiscal and fiduciary agent for the EWU Alumni Association as provided by its agreement with that entity.

## **B. University's Role and Responsibilities**

The University shall:

1. Work closely with the senior management and the governing board of the Foundation, along with the President of the University who will assume a prominent role in fund raising activities, including, without limitation, identifying, cultivating, and soliciting prospects for private gifts and grants;

2. Communicate the University's priorities, long-term plans, and strategic initiatives to the Foundation; and

3. As budget allocations allow, provide personnel for staffing of the Foundation, supplemental funding support for development programs and operations of the Foundation at levels to be negotiated annually, and other support which may include office space and computer technology. University employees performing work for the Foundation pursuant to this Agreement will, while they are performing that work, be responsible for following both University and Foundation workplace policies, procedures, rules, and directives. To the extent there are inconsistencies or conflicts between the University and Foundation workplace policies, procedures, rules, or directives, the University's workplace policies, procedures, rules, and directives will control.

4. Provide the Foundation with office space, including utilities, use of office furniture, file cabinets, associated equipment, and warehouse space for temporary storage of donated materials and equipment;

5. Provide the Foundation with use of office machines, materials and services as reasonably required for its operation, including consumable office supplies, telephone service, postage, use of word-processing, photocopying, facsimile transmission, duplication, publication, and audio-visual equipment and services, and part-time professional and/or staff services. The time allocated to services performed on behalf of the Foundation shall not be full-time for any University employee.

6. Provide the following accounting and auditing services:

a. Accounting and fiscal functions shall be performed by the University business office.

b. Before each fiscal year (July 1 through June 30), the University business office shall prepare a budget showing all anticipated transactions and services under this Agreement for that upcoming fiscal year, including all space and equipment, supplies, personnel, and other services the University expects to provide to the Foundation. The University President or designee will coordinate with the Foundation Chair or designee and review and approve that budget.

The value of all space and equipment, supplies, personnel and other services which the University provides to the Foundation shall not exceed the benefit received by the University from the Foundation in any fiscal year. The University will regularly keep track of the space and equipment, supplies, personnel, and other services it is providing to assure that this maximum amount is not being exceeded. The University business office will annually prepare, and the University President or designees will coordinate with the Foundation Chair or designee to annually review, a post-closing summary of the transactions between the two Parties to assure that the value of space, equipment supplies, personnel and services provided to the Foundation by the University does not exceed the benefits provided to the University by the Foundation.

### **C. Joint Obligations of the Parties**

1. The Foundation and the University shall be responsible for the actions and inactions of itself and its own officers, employees, and agents acting within the scope of their authority.

2. The Foundation and the University agree to respect the intent of the donor in allocating gifts to the appropriate entity.

3. The staff, officers, and members of the governing boards of the University and the Foundation shall engage in discussions and meetings to foster and maintain productive relationships and to ensure open and continuing communication and alignment of priorities. The Foundation and the University shall work cooperatively and collaboratively to effectuate their respective missions and to support the University. Clear and timely communications are a critical component of a cooperative and collaborative approach to working together. The staff, officers, and members of the governing boards of the University and the Foundation shall at all times interact with each other in a professional manner and

treat each other with respect and dignity.

**D. Operational Considerations**

1. The Foundation and the University acknowledge that at all times and for all purposes of the Agreement the Foundation shall act in an independent capacity and not as an agent or representative of the University. No University employee or representative, except for a University employee appointed as Executive Director of the Foundation by the University President or serving as an ex-officio member of the Foundation's governing board, shall act as an agent or representative of the Foundation.

2. The University is the owner of the copyright, trademark, and other rights in the name "Eastern Washington University" or the word mark. The University hereby grants the Foundation a nonexclusive license to use the name "Eastern Washington University" as part of its corporate name and to use such name or the word mark in connection with its fundraising activities, so long as all solicitation materials are reviewed and approved by the Advancement Office of the University prior to their use. The University may extend or revoke this license at any time with or without cause, in its entirety or as to particular uses of the name by the Foundation.

3. This Agreement shall continue until terminated. It may be terminated by either Party effective at the end of any State of Washington fiscal year upon written notice to the other Party at least ninety (90) days in advance. It may be terminated immediately by the University in the event of an unacceptable change to the Articles of Incorporation or Bylaws of the Foundation pursuant to Section A.13 above. The Parties acknowledge that this Agreement, or any successor agreement with the University, shall be necessary for the Foundation to raise and manage private resources in support of the mission, goals, and priorities of the University. A termination of this Agreement for any reason does not release the existing restriction that all assets raised by the Foundation must remain in trust for the sole and exclusive benefit of the University.

4. This Agreement shall be governed by the laws of the State of Washington. Before instituting any legal action, the Parties shall meet and attempt in good faith to resolve the disagreement using the process described in Section D.5 below. Venue of any action hereunder shall be in Spokane County Superior Court.

5. If the Foundation or the University suspects or believes that the other Party is in breach of this Agreement or is otherwise not fulfilling its obligations under this Agreement, the Party asserting breach or failure shall give notice to the other Party of the suspected breach or failure. Thereafter, representatives of each Party's choosing will meet at a mutually agreed-upon time and location to attempt to arrive at an informal resolution of the issue. If, after that initial meeting, the Parties are unable to satisfactorily resolve the matter, the Chair of the Foundation Board of Directors and the President of the University shall meet at a mutually agreed-upon time and location to attempt to resolve the issue.

6. No alteration or modification of any term of this Agreement shall be valid unless made in writing and signed by the Parties.

7. This Agreement constitutes the entire agreement of the Parties, including all oral understandings, on the subject of their general and overall relationship. The Parties may enter into other stand-alone agreements on specific subjects. All such agreements shall be in writing and signed by the Parties.

8. This Agreement is not assignable by either Party in whole or in part.

9. The Foundation shall develop and maintain policies on Gift Acceptance and Campaign Counting which are acceptable to the University. The University shall develop and maintain a policy on naming rights which is acceptable to the Foundation.

10. This Agreement may be executed in counterparts, each of which shall be deemed an original and together shall constitute a single instrument. Counterparts executed and delivered by electronic transmission shall have the same force and effect as counterparts bearing original signatures.

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of the Parties on the dates indicated below their signatures.

Eastern Washington University

DocuSigned by:  
Vicki Wilson  
E72C066F0850412  
VICKI WILSON  
Chair of Board of Trustees of  
Eastern Washington University  
Date 12/13/2020

DocuSigned by:  
David May  
DB69007D733E429  
DAVID MAY  
Interim President of Eastern Washington  
University  
Date 10/28/2020

APPROVED AS TO FORM:

[Signature]  
JASON K. MACKAY  
Assistant Attorney General for Eastern  
Washington University  
Date 10-28-2020

Eastern Washington University Foundation

DocuSigned by:  
Krisann Hatch  
91776F78CF1C4EB  
KRISANN HATCH  
Chair of Board of Directors of  
Eastern Washington University Foundation  
Date 10/28/2020

DocuSigned by:  
Barb Richey  
C33520142A08405  
BARB RICHEY  
Executive Director of Eastern Washington  
University Foundation  
Date 10/28/2020

APPROVED AS TO FORM:

DocuSigned by:  
Terry M. Kelly  
381AE000D2644B5  
TERRY M. KELLY  
Attorney for Eastern Washington  
University Foundation  
Date 10/28/2020