

**WESTERN WASHINGTON UNIVERSITY
ITEM SUBMITTED TO THE BOARD OF TRUSTEES**

TO: Members of the Board of Trustees

FROM: Sabah Randhawa, President

DATE: June 9, 2023

SUBJECT: **APPROVAL OF REVISED AGREEMENT BETWEEN WESTERN WASHINGTON UNIVERSITY, AND THE FOUNDATION FOR WESTERN WASHINGTON UNIVERSITY AND ALUMNI**

PURPOSE: Action Item

Purpose of Submittal:

President Randhawa will review the proposed revised Memorandum of Understanding between Western Washington University, and the Foundation for Western Washington University and Alumni with the Board of Trustees.

Proposed Motion:

Moved, that the Western Washington University Board of Trustees approve the revised agreement between Western Washington University, and The Foundation for Western Washington University and Alumni.

Attached:

Revised Memorandum of Understanding between Western Washington University, and The Foundation for Western Washington University and Alumni

AGREEMENT
Between
WESTERN WASHINGTON UNIVERSITY
And
THE FOUNDATION FOR WESTERN WASHINGTON
UNIVERSITY AND ALUMNI

THIS AGREEMENT is entered into by and between WESTERN WASHINGTON UNIVERSITY (the University), a public institution of higher education located in Bellingham, Washington, and THE FOUNDATION FOR WESTERN WASHINGTON UNIVERSITY AND ALUMNI (the Foundation), a nonprofit corporation headquartered at the University in Bellingham, Washington.

WHEREAS, the University, pursuant to RCW 28B.35.120(10) may receive such gifts, grants, conveyances, devises, and bequests of real or personal property from whatsoever sources, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out University programs; and

WHEREAS, the University has, from its express power to receive such gifts, the implied power to solicit the same pursuant to an agreement such as this; and

WHEREAS, the University has authority pursuant to RCW 28B.35.120(1) to carry out such other activities consistent with Chapter 28B.35 RCW and the authority pursuant to RCW 28B.35.120(9) to enter into contracts essential to the purposes of the University; and

WHEREAS, the Foundation is a nonprofit corporation duly organized for such purposes as maintaining, developing, increasing, and extending the facilities and services of the University, and promoting and perpetuating an organization of all alumni of the University; and

WHEREAS, the Foundation is empowered to solicit and receive property and to make contributions, grants, gifts, and transfers of property to the University; and

WHEREAS, the Foundation exists to raise and manage private resources to support and advance the mission and priorities of the University; and

WHEREAS, the Foundation is further responsible for identifying, engaging and nurturing relationships with alumni, potential donors and other friends of the University; and

WHEREAS, the University and the Foundation recognize that close collaboration and cooperation is necessary to serve the mission and priorities of the University and avoid unproductive duplication of effort; and

WHEREAS, the University and the Foundation first entered into a similar agreement in 1995 which was first amended in 2010 and amended again in 2016, and has been reviewed and is now further amended to update aspects of the relationship between the University and the Foundation to reflect the merger between the Western Washington University Foundation and the Alumni Association of Western Washington University,

NOW, THEREFORE, the parties hereby agree as follows:

I. Pledge of Mutual Support and Cooperation

The Board of Trustees of the University and the Board of Directors of the Foundation pledge their mutual support and cooperation in furtherance of the respective purposes of the University and the Foundation. The Board of Trustees of the University recognizes and respects the authority of the Board of Directors of the Foundation to govern and manage its affairs, as set forth in its Articles of Incorporation. The Board of Directors of the Foundation recognizes and respects the authority of the Board of Trustees to govern the University, to define its policies and purposes, and to determine program emphasis.

II. Obligations of the Foundation

The Foundation, its Board of Directors, officers, and agents agree to:

1. Design and implement such programs and procedures so as to persuade continuous and special philanthropic support and benefactions to further the purposes of the Foundation for the benefit of the University. This support shall include financial support for the University President and other designated University officials to engage in University development activity, including, but not limited to, expenses for travel, vehicle provision, certain memberships, and entertainment expenses, as may need to be incurred. For this purpose, the Foundation will comply with all applicable federal and state laws, and will establish rules and procedures for the management of all affairs of the Foundation in accordance with:

- a. The requirements for tax-exempt entities under the federal laws described in Section 501(c)(3) of the Internal Revenue Code of 1986, or acts amendatory thereof or supplementary thereto; and

b. The laws of the state of Washington applicable to the Foundation, including, but not limited to, those governing charitable solicitations (Chapter 19.09 RCW), nonprofit corporations (Chapter 24.03A RCW), trusts holding property for charitable purposes (Chapter 11.110 RCW), and the authority of state agencies (Chapter 43.09 RCW).

2. Promote and perpetuate an organization of all alumni of the University, and to design and implement such programs and procedures so as to perpetuate respect and engagement among University Alumni.

3. Work with the Board of Trustees to provide a reasonable level of support for the President. "Reasonable level of support" may include, but not be limited to:

- a. Provision of, on agreed upon lease terms, appropriate housing for the President and family that is commensurate with the role of University President, and is suitable for regular entertaining that is intended to advance the mission of the University;
- b. An appropriate vehicle, including regular and preventative maintenance;
- c. Membership to appropriate social/business/athletic club(s) that provide the opportunity to entertain guests or potential donors of the University;
- d. Provision of funding to be used for expenses related to development and professional activities, as incurred by the President and other designated University staff. The President's expenses paid by the Foundation will be reviewed at least annually, or more frequently if directed by the Board of Trustees. These expenses will be reviewed by the Chair of the Board of Trustees of the University, or designee, to ensure the President's expenses have been properly submitted, reviewed, approved and that appropriate documentation is maintained.

Provision of any additional support will be determined mutually between the Board of Trustees and the Foundation Board.

4. 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 by persons or foundations absolutely or in trust, as the case may be; retain proper agents, experts, consultants, accountants, counselors, advisers, and investment advisers for the proper accepting, holding, administering, investing, and disbursing of such funds and properties of any kind or character; and in general do all things that may appear necessary and useful in

accomplishing these purposes.

5. Acknowledge that the Foundation can provide financial support for the University to hire employees for various program or development activities.

6. Use all assets and earnings of the Foundation exclusively for University or Foundation purposes, including the payment of expenses necessarily incident thereto; and no part of such assets and earnings shall benefit any officer or member of the Board of the Foundation or any other individual, except in payment of reasonable compensation for services actually rendered or expenses necessarily incurred.

7. Assist in the perpetuation of respect and interest in the University by the awarding of scholarships to worthy prospective students.

8. Have the authority, and it shall be its duty, to hold and apply all donations, grants, devises, or bequests, or any part thereof, in such manner as may have been stipulated or provided in the instrument creating such donation, grant, devise, or bequest.

9. Have the authority to sell, mortgage, pledge, lease, or exchange all or any part of the real or personal property or funds of the Foundation, unless otherwise specifically provided in the Foundation's governing instruments, at such prices and upon such terms and conditions as the Foundation may deem best; and without regard to any limitations on investments imposed by law on state agencies.

10. Have full power and authority to purchase, lease, accept as a gift, devise, or bequest, or otherwise acquire such real or personal property for University purposes, contingent upon University approval by the President or their designee, and to establish title of such property in the University upon acknowledgement of receipt.

11. Have full power and authority to purchase, lease, accept as a gift, devise, or bequest, or otherwise acquire such real or personal property, to be held, administered, or used in any way whatsoever for the benefit of the University, or to assist the University in the fulfillment of its educational purposes; and to that end, the Foundation shall have full power and authority to hold, own, control, handle, administer, or operate any such real or personal property, including the operation of any business connected with or incident to the ownership or control of such property, and to sell, lease, pledge, mortgage, exchange, or otherwise dispose of any such property at such prices and upon such terms and conditions as it may deem best.

12. Borrow money and make and issue bonds, notes, contracts, and other evidence

of indebtedness therefore, and by the proper resolution duly adopted by a majority vote of the members of the Foundation's Board of Directors, to secure payment thereof by authority provided above.

13. Engage in and disburse any part or all of its funds, both income and principal, for any and all lawful activities permitted by the laws and regulations governing tax-exempt charitable corporations at that time, and which may be necessary or incidental to the furtherance of the purposes of this Foundation, including disbursements for scholarships or grants for students at the University pursuant to such terms and conditions as might be lawfully established by donors or the University.

14. Hold, invest, and manage University endowment funds established through donation, grant, devise, or bequest from any public or private source as agent of the University; and apply the corpus and income, or any part thereof in such manner as may have been stipulated or provided in the instrument creating the endowment.

15. Use reasonable portions of its funds and income thereto to pay the administrative expenses of the operation of the Foundation not provided by the University under this Agreement.

16. Not change its stated purpose for existence as set forth in Article IV of its Articles of Incorporation during the lifetime of this Agreement without first obtaining written consent from the University.

17. Agrees to comply with Payment Card Industry Data Security Standards (PCI DSS) as outlined in University policy and the National Automated Clearing House Association (NACHA) when accepting payments.

18. Agrees to be responsible and account for in its own records all donations wherein the donor names the Foundation or the University as recipient. The Foundation agrees to accept, acknowledge, and timely tender to the University all donations it receives from donors who expressly direct that the donation be made to the University and not the Foundation. Funds will be timely tendered to the University in accordance with donor intent and University policy.

19. Transmit to the University's Vice President for Business and Financial Affairs a copy of its annual audited financial statement and management letter, if any, prepared by an independent certified public accountant, by October 25 of each year. The Foundation also agrees to make its books and records available to audit by such individual as designated by

the University's Board of Trustees or its designee.

20. Agrees to be responsible for ensuring financial data is accurately recorded in the Financial Repository; using the University's established account coding structure; ensuring financial data is reviewed and approved by the responsible Foundation official; contracting and arranging financial audits; filing and paying and tax liabilities; managing and investing entity funds; complying with all financial deadlines; and complying with regulations.

21. Agrees to follow state or federal privacy laws and cyber security best practices that protect personal, student, health, or financial data including FERPA (student records), Personnel Health Information (HIPPA, FERPA and RCW 70.02) and Gramm-Leach Bliley (personal Financial Data) that might be shared as part of activities of this Agreement.

III. Obligations of the University

For and in consideration of the Foundation promising to operate solely for the benefit of the University and to carry out the aforementioned activities, the University agrees to:

1. Provide the Foundation with office space, utilities, office equipment, furnishings, and access to space for development activities. The fair rental market value for the use of such space and equipment shall be deemed to be a partial payment by the University for the Foundation's services as described in Article II above.

2. Provide the Foundation with support services, such as consumable office supplies, telephone service, software and data services, Payment Card Industry Data Security Standards policies, standards, and guidelines, merchant services and payment processing support services, postage, the use of audio-visual equipment and services, errors and omissions insurance coverage for its directors, workers' compensation insurance coverage for its volunteers, and duplicating, printing, and publication services, all as partial payment for the Foundation's services to the University as described in Article II above.

3. Provide for the operation of the Foundation, professional staff services in the form of a person to function as President and CEO of the Foundation and such other professional and classified staff as may be needed to carry out Foundation activities within the confines of support budgeted by the University. The University also agrees to provide accounting, fiscal, information, and such other administrative services as may be necessary

to carry out Foundation activities. The services provided to the Foundation by the University pursuant to this section shall be services rendered by employees of the University.

4. Provide parking passes at the current rate to Foundation donors for special events and other limited uses in order to facilitate donors' ability to further engage with the University, as specified annually by the Foundation.

5. Submit an annual statement of accounting to the Foundation summarizing the value of items 1, 2, and 3 above, and referencing salary and benefits. This submission can be in the form of the portion of the annual operating budget adopted by the University which relates to University advancement and development activity. The University shall submit its annual statement of accounting to the Foundation by September 1 of each year.

IV. Services Acknowledged

The services as described in Article III above shall constitute payment in full by the University for Foundation services. The Foundation will in turn acknowledge to the University that it has expended its best efforts to seek to accrue gifts, grants, donations, and endowments for the benefit of the University.

V. Other Agreements

The Foundation and the University further agree as follows:

1. At all times and for all purposes of this Agreement, except for the provisions in paragraph II. 14 the Foundation shall act as an independent contractor and not as an agent of the University. The Foundation, when acting as an agent of the University, shall abide by the terms set forth in Western Washington University Board of Trustees Bylaws and Policies.

2. That Foundation books, accounts, and any form of communications and records are not public records as defined in Chapter 42.56 RCW; and that the University's public records that pertain to donations to the University are non-disclosable under RCW 42.56.320(4) or otherwise non-disclosable under RCW 42.56.230(4) or .420(4), or such other provisions as may be enacted into law.

3. Foundation accounts and records pertaining exclusively to the management of University endowments are deemed public records and the Foundation shall provide, upon request of the University, reports thereon in a timely manner.

4. Alumni and student data that is shared with the Foundation by the University, and additional data obtained by the Foundation while serving in its role, shall be governed by a separate Data Sharing Agreement to be mutually developed by the University and Foundation.

VI. Not Assignable

This Agreement is not assignable by the Foundation either in whole or in part.

VII. Variations and Amendments in Writing

No amendment, alteration, or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreements not incorporated herein, and no amendments, alterations, or variations of the terms hereof unless made in writing between the parties, shall be binding on any of the parties hereto.

VIII. Parties Responsible for Own Acts

The Foundation and the University shall each be responsible for their own acts and responsible to each other for any negligent acts which cause damage to the other.

IX. Termination of Agreement

This Agreement 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 thirty (30) days in advance thereof.

X. Choice of Laws

This agreement shall be construed in accordance with the laws of the state of Washington.

XI. Effective Date

This Agreement shall be effective as of July 1, 2023 and replaces any and all earlier agreements between the parties.

WESTERN WASHINGTON UNIVERSITY

By: _____
Chair, Board of Trustees

Date: _____

Attest: _____
Secretary, Board of Trustee

Date: _____

Approved as to legal form:

By: _____
Assistant Attorney General

Date: _____

THE FOUNDATION FOR WESTERN WASHINGTON UNIVERSITY AND ALUMNI

By: _____
Chair, Board of Directors

Date: _____

Attest: _____
Secretary, Board of Directors

Date: _____