

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE UNIVERSITY OF WEST FLORIDA  
AND  
THE UNIVERSITY OF WEST FLORIDA FOUNDATION, INC.**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), is made and entered into on the last date signed below by and between the University of West Florida (“the University”), acting for and on behalf of the University of West Florida Board of Trustees (“the Board of Trustees”) and the University of West Florida Foundation, Inc. (“UWF Foundation” or “the Foundation”), acting on behalf of the University of West Florida Foundation, Inc. Board of Directors (“Foundation Board of Directors” or “the Foundation Board”).

**WHEREAS**, the UWF Foundation is a direct support organization of the University as defined in section 1004.28, Florida Statutes; Florida Board of Governors’ Regulation 9.011; University Regulation 5.016; and other applicable provisions of law;

**WHEREAS**, the UWF Foundation was organized and incorporated in 1965 for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, foundations, and others for the benefit of the University;

**WHEREAS**, the UWF Foundation exists to encourage, manage and administer private resources to support the mission and priorities of the University, as established by the Board of Trustees and the President of the University;

**WHEREAS**, the Foundation is dedicated to assisting the University in the building of the endowment and in addressing, through financial support, the long-term academic and other priorities of the University and to provide opportunities for students and a margin of institutional excellence unavailable with state funds;

**WHEREAS**, the Foundation is a not for profit corporation under the provisions of Chapter 617 of the Florida Statutes, and qualifies under IRC §501(c)(3) for tax purposes. The Foundation has responsibility to encourage, manage and administer gifts and bequests of property and funds for scientific, educational and charitable purposes, all for the advancement of the University and its objectives; to promote and support education; to provide funds which are not provided from public sources for use in the furtherance of the educational mission and welfare of the University, its faculty and students and educational facilities, including dormitories; and to do and perform any acts and expend its funds in a manner consistent with the spirit and intent of its donors. Moreover, in accordance with the Bylaws, Board members of the Foundation have a responsibility to maintain knowledge of the University’s mission, programs, resources, and needs, to serve as effective University spokespersons in the community; to assist the President and Foundation staff in establishing and maintaining a favorable climate for giving; to participate actively in the fundraising programs of the Foundation through attendance at meetings and by providing financial support of the University on a regular basis; to review and

approve the Foundation's annual operating budget; and to determine investment goals and objectives of the Foundation's investments;

**WHEREAS**, in connection with its fund-raising and asset-management activities, the Foundation assists with funding of personnel experienced in planning for and managing private contributions and works with the University to assist and advise in such activities; and

**WHEREAS**, the University and the UWF Foundation desire to enter into this MOU to memorialize the roles and responsibilities of each party to the other party, in an effort to further contribute to the coordination of their mutual activities.

**NOW THEREFORE**, for and in consideration of the mutual commitments, obligations, and benefits hereby undertaken, the Parties agree as follows:

**I. *Use of University Name, Seal and Logotype***

- A. Consistent with its mission to help to advance the plans and objectives of the University, the Foundation may use the University's name. Furthermore, by mutual agreement, the Foundation may utilize the University's seal, logos, acronyms, and other symbols ("University Marks") in the promotion of its business and activities, provided that, the Foundation clearly communicates that it is conducting business in its own name for the benefit of the University. All correspondence, advertisements, and other communications by the Foundation must clearly indicate the communication is by the Foundation and not from the University. The Foundation may use University Marks only in connection with the services rendered for the benefit of the University and in accordance with the guidance and directions furnished to the Foundation by the University, or its representatives or agents, from time to time. The University shall exercise control over and be the sole judge of whether or not the Foundation has met or is meeting the established standards of quality.
- B. The Foundation is not authorized to delegate the authority to use any University marks to any person or entity.

**II. *Institutional Governance***

- A. The Board of Trustees is responsible for the effective governance of the University including setting the strategic mission and vision; employment and compensation of the University President; ensuring adequate resources and fiscal prudence; ensuring quality academic programs that meet the needs of the region; and ensuring that the University's direct support organizations operates in accordance with section 1004.28, Florida Statutes.
- B. The Board of Trustees, in accordance with regulations and guidelines of the Board of Governors, shall prescribe by regulation any required conditions with which the Foundation must comply in order to use property, facilities, or personal services.

### ***III. Board of Trustees Support of Foundation's Role***

The Board of Trustees recognizes the critical role played by the Foundation in advancing the University by encouraging, managing and administering charitable gifts from alumni, friends, corporations and foundations. The Trustees are committed to actively support, and to work in partnership with the Foundation Board to encourage giving and effective stewardship. The Board of Trustees will support the Foundation's efforts whenever possible through advocacy, participation in fundraising and/or donor recognition activities, and personal financial support. It is recognized that all who serve on any of the UWF boards have an important role in shaping the University's future.

### ***IV. The Foundation's Relationship to the University***

- A. The Foundation is a not for profit corporation under the provisions of Chapter 617 of the Florida Statutes and qualifies under IRC §501(c)(3) for tax purposes. The Foundation was created to serve the best interests of the University and raise, manage, distribute and steward private resources to support the various missions of the University.
- B. The Foundation will at all times operate in a manner that is consistent with the goals of the University and in accordance with all applicable laws governing University direct support organizations in Florida including, but not limited to Florida Statutes and Florida Board of Governors' regulations and guidelines, and applicable University regulations.
- C. The Foundation Board of Directors is responsible for the control and investment of all assets of the Foundation, including the prudent management of all gifts consistent with donor intent.
- D. The Foundation is responsible for the performance and oversight of all aspects of its operations based on a comprehensive set of Bylaws that clearly address the Board of Director's fiduciary responsibilities, including expectations of its individual Board members based upon ethical guidelines and policies.
- E. The President of the Foundation is selected by the President of the University in accordance with Florida law and University policy. The Foundation President reports to the University President or a designee reporting directly to the President. The Foundation President shall advise, inform, and serve as a key liaison to the Foundation Board of Directors, especially with respect to business and fiduciary matters. The Foundation President is responsible for implementing Foundation policies and actions taken by the Foundation Board of Directors.
- F. The Foundation may earmark a portion of its unrestricted funds to a discretionary fund for the University or the President of the University and will either transfer a percentage of those funds annually to the University in compliance with state law and University policies or reimburse appropriate University or Presidential expenditures. All such expenditures must comply with I.R.C. §501(c)(3) and be consistent with the Foundation's

mission. Such funds will be audited as part of the Foundation's annual independent audit, as described below in Section VIII.

***V. The University's Relationship to the Foundation***

- A. The University President is responsible for communicating the University's priorities and long-term plans, as approved by the Board of Trustees, to the Foundation.
- B. The University recognizes that the Foundation is a private corporation with the authority to keep records and data confidential consistent with Florida law, including, but not limited to, the exemption from public records disclosure set forth in Section 1004.28, Florida Statutes. The University shall establish and enforce policies supporting the Foundation's ability to respect the privacy and confidentiality of donor records in accordance with Florida law.
- C. The Foundation and the University acknowledge that each is an independent entity and that neither will be liable, nor will be held out by the other as liable, for any of the other's contracts, torts, or other acts or omissions, or those of the other's trustees, directors, officers, employees or agents. Each party's liability to the other shall be limited to the extent defined by agreement duly approved by the University and the Foundation and/or any other appropriate regulatory body, such as the Florida Board of Governors. The Foundation is a separately incorporated I.R.C. §501(c)(3) non-profit organization that is responsible for its own acts or omissions.
- D. The University shall include the Foundation as an active and prominent participant in the strategic planning for the University.
- E. The Chair of the Board of Trustees shall appoint at least one representative to the Foundation Board of Directors and the executive committee of the Foundation. The University President or President's designee shall also serve on the Foundation Board of Directors and Foundation executive committee. The Board of Trustees shall approve all other appointments in accordance with Section 1004.28, Florida Statutes, as it may be amended from time to time. .
- F. In consideration of Foundation services, where permitted by law, the University may provide the Foundation with fair and reasonable compensation or payment for services. The amount of compensation may be negotiated on an annual basis by year-end of the preceding year, in accordance with University regulations and policies. In consideration of Foundation services, the University may also provide in-kind support, including but not limited to use of University premises, technology resources, professional or other staff such as accounting/finance staff, procurement, legal counsel as appropriate, facilities maintenance, and the like..
- G. Similarly, in consideration of University services, the Foundation may provide the University with fair and reasonable compensation or payment for services. The amount of compensation may be negotiated on an annual basis by year-end of the preceding year

in accordance with University regulations and policies. In consideration of University services, the Foundation may also provide in-kind support.

- H. The University is responsible for the employment, compensation, and evaluation of all its employees, including any employees assigned to perform any work or functions on behalf of the Foundation. In the event the Foundation employs personnel directly, it shall be responsible for the employment, compensation, and evaluation of its employees.
- I. The University shall establish and enforce policies that support the UWF Foundation's ability to respect the privacy and confidentiality of donor records in accordance with Florida law.

## ***VI. Foundation Responsibilities***

### **A. Fund-Raising**

- 1. The Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of the University.
- 2. The Foundation, in consultation with the University President, is responsible for planning and executing comprehensive fund-raising and donor-acquisition programs in support of the institution's mission. These programs include annual giving, major gifts, planned gifts, special projects, and campaigns as appropriate.
- 3. The Foundation will establish, adhere to, and periodically assess its gift-management and acceptance policies. It will promptly acknowledge and issue receipts for all gifts on behalf of the Foundation and the University and provide appropriate recognition and stewardship of such gifts.
- 4. The University recognizes that the Foundation bears major responsibility for fund-raising. University representatives will coordinate fund-raising initiatives including major gifts solicitations with the Foundation.
- 5. The University President and Development staff will work in conjunction with the leadership of the Foundation Board and the Foundation Executive Director to identify, cultivate, and solicit prospects for private gifts.
- 6. The Foundation shall not accept grants from state or federal agencies, except in special circumstances that are approved by the Foundation Board of Directors and the governmental agency.
- 7. The Foundation shall establish and enforce policies to protect donor confidentiality and rights in accordance with Florida law.

### **B. Asset Management**

1. The Foundation will establish asset-allocation, disbursement, 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).
2. The Foundation will receive, hold, manage, invest, and disperse contributions of cash, securities, patents, copyrights, and other forms of property, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred-gift instruments or otherwise, in accordance with its gift policies and applicable law.

### **C. Institutional Flexibility**

1. The Foundation may explore current opportunities, including acquisition and management of real estate on behalf of the University for future allocation, transfer, or use.
2. Where permitted by law and University regulation and policy, the Foundation may serve as an instrument for entrepreneurial activities for the University and engage in such activities as purchasing, developing, or managing real estate for University expansion, student housing, or retirement communities. It also may hold licensing agreements and other forms of donated intellectual property, borrow or guarantee debt, or engage in other activities to further the purposes of the University.
3. When distributing gift funds to the University, the Foundation shall monitor and disclose any terms, conditions, or limitations imposed by donor or legal determination on the gift. The University shall abide by such restrictions to the extent permitted by law.

### **D. Transfer of Funds**

1. The Foundation is the primary depository of private gifts and will make available funds to the designated entity within the institution in compliance with applicable laws, University policies, Foundation spending policies and gift agreements.
2. The Foundation's disbursements on behalf of the University must be reasonable and appropriate expenses that support the University, are consistent with donor intent, and do not conflict with Florida law.

## ***VII. Foundation Funding and Administration***

- A. The Foundation is responsible for establishing a financial plan and annual budget to underwrite the cost of Foundation programs, operations, and services. The annual budget of the Foundation shall be approved by Board of Directors and Board of

Trustees. Significant changes in planned expenditures in the approved budget must be reported to the Board of Trustees as soon as practicable.

- B. The Foundation has the right to fund its operations by reasonable means in accordance with Foundation Board approved policies. Such methods may include the assessment of fees for services, imposing administrative fees, or utilizing a percentage of the earnings from the overall investment pool. These policies will be made available to the public and will be disclosed in accordance with applicable laws and regulations.
- C. To the extent payments are made to the Foundation from the University, the Foundation will collaborate with the Board of Trustees to formalize agreements establishing the basis for any such payments. Any allowable transfers shall be formalized in writing or electronically in a form that has a retrievable transaction trail. All payments shall be limited by the applicable Florida Board of Governors regulation and University regulation governing direct support organizations.
- D. The Foundation shall maintain, at its own expense, copies of the plans, budgets, and donor and alumni records developed in connection with the performance of its obligations.
- E. The Foundation will provide access to data and records to the University in accordance with requests by the University with applicable law and Foundation policies and guidelines. The Foundation will provide copies of its annual report, and other information that may be publicly released in accordance with Florida law.

***VIII. Communication Between the Board of Trustees and the Foundation Board***

- A. The Board of Trustees will communicate University priorities and goals via the President of the University. If the matter regards the President, such as his or her compensation, the communication will come from the Board of Trustees as a collective body, unless the matter was specifically delegated to a Board of Trustees member, such as the chair. The authority of the Board of Trustees is a collective authority. Individual trustees have no individual authority.
- B. The Foundation shall provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant in accordance with rules adopted by the State of Florida Auditor General pursuant to s. 11.45(8), Florida Statutes and by the Board of Trustees.
- C. The Board of Trustees will receive a copy of the audit of the Foundation's financial and operational records and the annual audited financial statements, including management letter, and will certify the compliance of the Foundation with applicable statutes and rules with regard to direct support organizations of the University.

- D. The Foundation will report its anticipated use of University resources to the Board of Trustees on an annual basis. The report will identify the number and position of employees who will provide personal services to the Foundation, as well as the square footage of the areas in the University buildings which will be utilized as office space by the Foundation. The University may then ascribe the value of such property use in accordance with its internal valuation formula. The Foundation shall comply with regulations prescribed by Board of Trustees in accordance with regulations and guidelines of the Florida Board of Governors.
- E. The Foundation will annually certify to the Board of Trustees in the form of a letter signed by the Foundation's CEO and CFO that the University resources allocated in the prior fiscal year were used for the purposes approved by the Board of Trustees.
- F. The Foundation Board of Directors will communicate with the Board of Trustees via the President of the University. If the matter regards the President, the communication will come from the Board as a collective body, unless the matter was specifically delegated to a Board member, such as the Foundation Board President. In accordance with the Foundation Bylaws, the authority of the Foundation Board is a collective authority. Individual directors have no individual authority.
- G. Amendments to the Articles of Incorporation or Bylaws of the Foundation occurring other than by operation of law shall be submitted by the UWF President to the Board of Trustees for approval prior to becoming effective.
- To ensure effective achievement of the terms of this MOU, the University and Foundation officers and Board representatives shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.
- H. Consistent with the regulations of the Board of Trustees, in the event the Foundation is decertified as a direct support organization of the University or ceases to exist, the Foundation shall, after paying or making provision for payment of all liabilities of the Foundation, distribute remaining Foundation assets in accordance with Board of Trustees regulations, and applicable Florida law as it may be amended from time to time. Consistent with provisions appearing in the Foundation's Bylaws and Articles of Incorporation, should the Foundation cease to qualify as an I.R.C. §501(c)(3) organization, the Foundation will transfer its assets and property to the University, to a reincorporated successor Foundation, or to the state or federal government for public purposes, in accordance with the law and donor intent.



IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed by their duly authorized officers as of the day and date first above written.

DocuSigned by:  
Suzanne Lewis  
03098AC95429448...  
Chair  
University of West Florida  
Board of Trustees  
09/23/2021  
Date: \_\_\_\_\_

Jason D. Crawford  
Chair  
UWF Foundation, Inc.  
Board of Directors  
Date: Aug 9, 2021  
Jason D. Crawford

DocuSigned by:  
Martha Saunders  
D54A387C376848D...  
President  
University of West Florida  
09/24/2021  
Date: \_\_\_\_\_

Howard J. Reddy  
President  
UWF Foundation, Inc.  
Date: June 9<sup>th</sup> 2021  
Howard J. Reddy

Board of Trustees Approved: September 16, 2021  
Foundation Board Approved: June 9, 2021