



MEMORANDUM OF UNDERSTANDING
BETWEEN
THE ARIZONA BOARD OF REGENTS ON BEHALF OF
NORTHERN ARIZONA UNIVERSITY
AND
THE NORTHERN ARIZONA UNIVERSITY FOUNDATION, INC.

THIS AGREEMENT, agreed to as of this 13th day of November, 2008, by and between the Arizona Board of Regents (ABOR) for and on behalf of Northern Arizona University (the University) and the Northern Arizona University Foundation, Inc (the Foundation).

The Foundation was organized and incorporated in 1959 for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, Foundations, and other donors for the benefit of the University.

The Foundation exists to raise and manage private resources supporting the mission and priorities of the University, and provide opportunities for University students and a margin of institutional excellence unavailable with state funds.

The Foundation is dedicated to assisting the University in addressing, through fund-raising and prudent investing, the short and long-term academic and other priorities of the University.

As stated in its Articles of Incorporation, the Foundation is a separately incorporated 501 (c) (3) organization and is responsible for identifying and nurturing relationships with potential donors and other friends of the University; soliciting cash, securities, real and intellectual property, and other private resources for the support of the University; and acknowledging and stewarding such gifts in accordance with donor intent and the Foundation's fiduciary responsibilities.

The University is committed to pursue consistent, coordinated, and concerted efforts to raise funds from the private sector to further its mission and help to achieve levels of excellence made possible by private philanthropy.

In consideration of the mutual commitments herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

License to Foundation

Consistent with its mission to help to advance the plans and objectives of the University, the Foundation is hereby provided a license to use the name, Northern Arizona University, and the emblems, marks and other trademarks to which the University has a legal right. The Foundation is also granted use of a logo that combines the Foundation name and the University mark and using blue (PMS# 281) and gold (PMS# 116). These licenses will terminate concurrently with the termination of this Agreement. However, the Foundation must adopt and use its own corporate seal.

ABOR or University Governance

- ABOR is responsible for overseeing the mission, leadership, and operations of the University.
- ABOR and the University President are responsible for setting objectives, priorities, and goals for the University.
- ABOR and the University President are legally responsible for the performance and oversight of all aspects of the University's operations.
- ABOR is responsible for the employment, compensation, and evaluation of all the University employees, including the University President.

The Foundation's Relationship to the University

- The Foundation is a separately incorporated 501 (c) (3) nonprofit organization created to raise, manage, distribute, and steward private resources to support the various missions, objectives, priorities, and goals of the University,
- The Foundation board of directors is responsible for the control and management of all assets of the Foundation, including the prudent management of all gifts consistent with donor intent, Foundation bylaws and/or policies, and fiduciary responsibilities.
- The Foundation is responsible for the performance and oversight of all aspects of its operations based on a comprehensive set of bylaws and/or policies that clearly address the board's fiduciary responsibilities, including expectations and requirements of individual board members based upon ethical guidelines and policies.
- The Foundation, with support from the Office of University Advancement, has primary responsibility for all NAU Fund, corporate, foundation, deferred and major gifts as well as special project fund-raising activities in addition to any capital campaign authorized by the University.

- The Foundation may earmark a portion of its unrestricted funds to a discretionary fund for 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 presidential expenditures. All such expenditures must comply with section 501 (c) (3) of the Internal Revenue Code and be consistent with the Foundation's mission. Such funds will be audited as part of the Foundation's annual independent audit.
- The Foundation may, at its discretion, designate its own or other unrestricted funds for the support of the goals of the University and the Foundation.
- The University President is an ex-officio and non-voting, member of the Foundation Board of Directors.
- The Foundation agrees to take appropriate actions to assure that third parties understand whether they are dealing with the University or the Foundation.

The University's Relationship to the Foundation

- The University designates the Foundation as the official philanthropic organization for the University, serving in that capacity as the official and coordinating organization for gift soliciting, receiving, recording, receipting, acknowledgement, and gift fund administration, management, and disbursement.
- The University President and/or the University Vice President for University Advancement are responsible for communicating the University's objectives, priorities and goals to the Foundation.
- The University and ABOR recognize that the Foundation is a private corporation with the authority to keep all records and data confidential, consistent with the requirements and constraints imposed by law.
- Through the University Advancement Office and subject to the availability of funds, the University agrees to provide and pay for the appropriate staff support required by the Foundation to fulfill its role and responsibilities. The Foundation will reimburse the University for its financial personnel, and for other personnel support in amounts determined annually by the Foundation Board and University President or his/her designee. The amounts to be paid by the University and the Foundation will be based upon the annual operating plan prepared by the Foundation.
- The University agrees to make available the Vice President for University Advancement to serve as the President of the Foundation.
- The University President, will consult with the Foundation Board regarding the hiring, evaluation, termination, and compensation of the Vice President for University Advancement in his or her capacity as the Foundation President.

- The University shall include the Foundation as an active participant in the strategic planning for the University. The Foundation strategic planning process will be aligned with the objectives, priorities, and goals set forth by the University.
- The University shall, consistent with legal requirements, establish and enforce practices that support the Foundation's ability to respect the privacy and confidentiality of donor records.
- The Foundation will adhere to guidelines set by ABOR and/or the University regarding the relationship between the University and component units of the University.

Foundation Responsibilities

Fund-Raising

- The Foundation shall create an environment conducive to increasing levels of private support for the mission, objectives, priorities, and goals of the University.
- The Foundation, in consultation with the University President, has primary responsibility for planning and executing comprehensive fund-raising and donor-acquisition programs in support of the institution's mission. These programs include, but are not limited to, the NAU Fund, corporate, foundation, deferred and current gifts, major gifts, planned gifts, special project fund-raising activities, and capital campaigns authorized by the University. University representatives will coordinate fund-raising activities involving major gift solicitations and capital campaigns with the Foundation as defined in University Advancement guidelines.
- 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, stewardship, and management of such gifts.
- The University President will work with the leadership of the Foundation board and the Foundation President to identify, cultivate, and solicit prospects for private gifts.
- The Foundation shall not accept grants from state or federal agencies, except in special circumstances that are approved in advance by the Foundation board of directors and the University President.
- The Foundation shall establish and enforce policies to protect donor confidentiality and rights.

Asset Management

The Foundation will establish management, asset-allocation, disbursement, and spending policies that adhere to applicable federal and state laws.

- The Foundation will use sound fiscal and business practices and follow generally accepted accounting principles.
- 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.
- The Foundation will engage an independent certified public accounting firm annually to conduct an audit of the Foundation's financial and operational records and will provide the University with a copy of the annual audited financial statements. Without conceding or otherwise agreeing that it is a "component unit" of the University under the criteria in GASB 39, the Foundation is willing to accommodate the University by allowing the Foundation's Financial Statements to be included as part of the University's Financial statements, if appropriate safeguards are taken.

Institutional Flexibility

- The Foundation will explore opportunities, including acquisition and management of real estate on behalf of the University for future allocation, transfer, or use.
- 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, securities, and other forms of intellectual property, and borrow or guarantee debt associated with startup companies formed on the basis of ABOR and/or University owned intellectual property. The Foundation may increase the Foundation revenue by engaging in matters that have no direct connection to the University.
- When accepting gifts to support the University, the Foundation will secure University approval prior to accepting any terms, conditions or limitations being required by the donor.
- When distributing gift funds to the University, the Foundation will disclose any terms, conditions, or limitations imposed by donor or law on the gift.

Transfer of Funds

- The Foundation is the primary depository of private gifts and will transfer funds to designated units within the University in compliance with applicable laws, University policies, Foundation policies, and gift agreements.

- The Foundation's disbursements on behalf of the University must be for reasonable business expenses that support the University, are consistent with donor intent, and do not conflict with the law.

Foundation Funding and Administration

- The Foundation is responsible for preparing an annual operating plan and associated revenue to underwrite the cost the Foundation programs, operations, and services. The annual operating plan will be prepared and discussed with the University sufficiently in advance of the start of the fiscal year so that the University and the Foundation may make reasonable preparations for their respective financial obligations.
- The Foundation has the right to use a reasonable percentage of the annual unrestricted funds, assess fees for services, or impose gift fees, to support its operations, consistent with industry practice. The use of fees must be disclosed to donors and the University.
- The Foundation may, from time to time, lease space for personnel from the University, at rates to be determined with reference to market rates available in the community.
- The Foundation will indemnify the University and hold the University harmless from any damages or liabilities that the University may incur as a result of the Foundation's acts or omissions.
- The Foundation will obtain and maintain commercial general liability insurance, property casualty insurance, commercial/business automobile liability insurance, and directors' and officers' liability insurance in no less than an amount determined reasonable by the Foundations Board of Directors unless the University agrees that such insurance is not needed.
- 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.
- The Foundation will provide access to confidential data and records to the University on a need-to-know basis in accordance with applicable laws and Foundation policies and guidelines. The Foundation will provide to the University copies of its annual report, and other information that may be publicly released.

Miscellaneous Terms

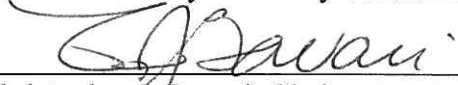
To ensure effective achievement of the terms of this Agreement, the University and the Foundation officers and board representatives shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.

Either party may, upon written notice to the other, at least one year prior to the end of a fiscal year, terminate this Agreement. Notwithstanding the forgoing, either party may terminate this Agreement in the event the other party defaults in the performance of its obligations and fails to cure the default within a reasonable time after receiving written notice to cure.

Should the University choose to terminate this Agreement, the Foundation may require the University to pay, all debt incurred by the Foundation on the University's behalf within 180 days of the written notice of termination, including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. Should the Foundation choose to terminate this Agreement, the University may require the Foundation to pay debt it holds on behalf of the Foundation.


Consistent with provisions appearing in the Foundation's bylaws and its articles of incorporation, should this Agreement terminate for any reasons or should the Foundation cease to exist or cease to be an Internal Revenue Code §501(c) (3) organization, the Foundation will transfer its assets and property, in priority order, 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.



Christopher J. Bavasi, Chair
Northern Arizona University Foundation, Inc.

Date: August 21, 2010



Mason S. Gerety, President
Northern Arizona University Foundation, Inc.

Date: August 21, 2010



John D. Haeger, President
Northern Arizona University

Date: Aug. 27, 2010