

**AGREEMENT FOR EXCHANGE OF SERVICES BETWEEN
NORTHWEST COLLEGE
AND
NORTHWEST COLLEGE FOUNDATION**

MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT is made and entered by and between NORTHWEST College, an institution of higher education in the State of Wyoming, hereinafter referred to as College, and the NORTHWEST College Foundation, a private, nonprofit corporation organized under provisions of the Internal Revenue Service and the State of Wyoming, hereinafter referred to as Foundation.

WITNESSETH:

WHEREAS, the College and Foundation are committed to pursue consistent, coordinated and aggressive efforts to raise funds from the private sector to further the mission of the College and help to achieve levels of excellence made possible by private philanthropy; and

WHEREAS, the Foundation is committed to providing support to help College raise money through donor contributions; and

WHEREAS, Foundation was formed for the purpose of raising, receiving, managing and distributing funds for the benefit of College according to the Foundation's Articles of Incorporation and By-Laws; and

WHEREAS, College has determined Foundation is the most appropriate organization and means to enhance and coordinate receipt of gifts, grants, conveyances, devises and bequests, and Foundation shall be the official fund raising organization for College; and

WHEREAS, Foundation is an independent, nonprofit organization which is organized and operated separate and independent of College; and

WHEREAS, College and Foundation agree that assurance must be provided that College and Foundation can conduct their business in a responsible fashion, fulfilling

obligations to contributors, to those who benefit from their programs, and to the general public.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

I. Definitions

- A. Board of Trustees – refers to the group of seven individuals elected to govern and determine major policy for Northwest College.
- B. Foundation - refers to the Northwest College Foundation, a private, nonprofit organization which is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1954 as amended, associated with Northwest College and established for the principal purpose of raising, receiving, managing, and distributing funds from the private sector for educational or related endeavors that support, enrich and improve College.
- C. Board of Directors – refers to the Northwest College Foundation Board of Directors, a group of individuals elected by the board as a whole to govern Foundation and oversee its operations as specified herein.
- D. College Relations and Development Office – refers to College office which has primary responsibility for institutional advancement functions (public relations, alumni relations and development).

II. Responsibilities of Foundation

- A. Foundation shall have a governing board of directors to oversee its operations.
- B. Foundation operation.
 - 1. The Foundation will retain full control over the Foundation staff, including the authority to hire employee(s), assign duties and positions to employee(s), and dismiss, supervise and evaluate all Foundation staff. The Foundation shall establish and implement such evaluation process as it deems appropriate for its employees. The Foundation will have full responsibility for the day-to-day operations of the Foundation.

2. Foundation shall select as its chief executive officer, an Executive Director who shall act as the chief administrative officer of the Foundation. The Executive Director shall be employed as an employee of the College, subject to the terms and conditions set forth in the Employment Agreement between the Executive Director and College, which contract is approved by the Foundation.
3. The Foundation will have authority to set the salary, benefits and other compensation of the Executive Director, which approval shall be signified by the Foundation's president executing the written Employment Contract between the Executive Director and the College.
4. The Foundation shall reimburse College for costs and expenses incurred by College for the salary and benefits paid by College for the Executive Director and other employees as appropriate.
5. Foundation agrees to give not less than thirty (30) days written notice in advance of its intent to terminate reimbursement to the College for salary and benefits which the College has agreed to provide to the Executive Director in order to allow College to terminate the Employment Agreement with Executive Director.

C. Primary Fund-Raising Organization.

1. With regard to fund-raising, guiding principles for the Board are:
 - a. Foundation exists to enhance the mission and goals of College; therefore, Foundation's work should be compatible with institutional plans, programs and policies.
 - b. Foundation exists for the benefit of College and not for the benefit of individuals within College.
 - c. Foundation should not be used to conduct activities which are appropriately conducted by College itself.

- d. The Foundation may accept gifts from a donor or donors which benefit other organizations besides Northwest College, so long as such gift is tied directly to and is a condition of a gift to the College or the Foundation.
2. Board of Directors agrees to provide cultivation, solicitation, consultation, investment and other related services in efforts to maximize gifts, grants, conveyances, devises and bequests of real or personal property from various sources to Foundation for benefit of College.
 3. To the extent approved by the Board of Directors, the following fund-raising activities, among others, may be done in the name of Foundation:
 1. Annual giving;
 2. Planned giving;
 3. Capital campaigns;
 4. Special project campaigns.
- D. Coordination with College.
1. It is understood that activities of Foundation are to be conducted for the benefit of College and must be consistent with College's plans, programs and policies.
 2. It is therefore agreed that Foundation shall:
 - a. Not solicit or accept gifts, grants, conveyances, devises, bequests, or otherwise from any source for a use specified by the donor which is inconsistent with College's mission and goals.
 - b. Coordinate its fund-raising and public relations programs with College's Office of College Relations and Development.

- c. Submit to College President all proposals for Foundation funding received directly from College divisions, departments, faculty, staff, students or other College units for assessment, prioritization and recommendation.
- d. Provide professional and/or volunteer consultations to College employees and students on fund-raising projects and cooperate with College with regard to Gift Solicitation Guidelines.
- e. Maintain a master calendar of solicitation activities, including mailings, events and programs, and coordinate these activities with College.
- f. Maintain and ensure confidentiality of donor records.
- g. Receipt, acknowledge and process all gifts and grants from private sources.
- h. Ensure the use of a proper accounting system and audits as deemed necessary.
- i. Provide College with reports and fulfill other obligations specified herein.

E. Management and Use of Funds

- 1. With regard to investment of gifts, Foundation shall:
 - a. Invest and manage all funds and property it receives. Board of Directors may in its discretion utilize a professional investment management firm or professional investment management individual although the Board of Directors shall have final authority and discretion with respect to all investment decisions.
 - b. Notwithstanding any contrary provision in this agreement, have authority to commingle assets it receives in a common investment fund or funds subject to any restrictions imposed by the donor or testator.

2. With regard to restricted gifts and grants (“restricted funds”), Foundation shall financially manage such restricted funds as may be necessary to satisfy the requirements of any restrictions which the funds are subject to.
3. With regard to unrestricted funds, Foundation shall transfer the funds to College in accordance with its need and as allowed by donor restrictions:
 - a. Unrestricted funds for such use or uses as Foundation designates, less amounts expended for Foundation expenses, in accordance with the following:
 - (1) All awards and grants shall be made by transfer of funds from Foundation to College for the use designated by Foundation and accepted by College.
 - (2) It is understood and agreed that Foundation will expend unrestricted funds and/or the income or gains therefrom for its operating expenses, including payment of reasonable compensation for services actually rendered in the operation of Foundation.
4. The Foundation will design, adopt, and may amend as necessary, the budget and/or strategic plan for the Foundation based upon College priorities and need. The annual budget shall identify expected revenue and proposed expenditures from undesignated funds for Foundation operating expenses.
 - a. In determining the appropriate use of Foundation funds, the Foundation shall consult with College concerning requests from College, however, Foundation shall have final authority to approve or reject financial requests.

F. Reports and Accounting.

1. Foundation shall:

- a. Permit designated representatives of College to examine its non-donor financial records during reasonable business hours.
- G. Conduct a public relations program among donors and prospective donors regarding Foundation's functions.
 - 1. Inform and encourage donors and prospective donors that their gifts, grants, conveyances, devises and bequests on behalf of College will be received by Foundation, and explain reasons and benefits therefor.
- H. Foundation may elect to engage College's Office of College Relations and Development staff or other College staff from time to time to secure performance of some Foundation duties identified herein.

III. **Responsibilities of College**

- A. College's Board of Trustees is responsible for protecting College's good name and therefore should have assurances that activities conducted on behalf and in the name of it are proper.
 - 1. With regard to fund-raising, guiding principals for the Board of Trustees are:
 - a. The Board should not make requests of the Foundation that are inconsistent with the mission and goals of the College. All such requests should be compatible with institutional plans, programs and policies.
 - b. The Board must recognize that the Foundation exists for the benefit of College and not for the benefit of individuals within college.
 - c. The Foundation will not be expected to conduct activities which are appropriately conducted by College itself.
 - d. College reserves the right to reject any gift that is deemed incompatible with its mission and goals.

- B. In consideration of the performance by Foundation of the activities and duties set forth above, College agrees:
1. To make office space available to Foundation and to provide the following utilities in conjunction with the office space at no cost to Foundation: electrical, gas and water service, local telephone service, computer network access and office furnishings. This list is not an exhaustive list, and College agrees to provide such other reasonable office amenities and provisions as is customary and consistent with other offices of College.
 2. To provide access to College services, including consumable office supplies; mail services; use of audiovisual equipment and services; computer services; duplicating, personnel and payroll services, printing and public relation services, scholarship accounting, management of property owned by Foundation, and other services; and supplies available to a College department in accordance with normal College procedures.
 3. To share costs associated with the college's development operation including employee salaries and benefits as well as operating fund dollars.
 4. To provide the following insurance for the benefit of the Foundation: professional liability insurance for employees through "blanket bond" coverage; board liability coverage to members of the Foundation Board of Directors; and automobile insurance for the Foundation's vehicle.
 5. To provide such other services as the parties may agree.
- C. The College hereby formally recognizes the Foundation and designates it as the principal fund-raising organization for the College. College shall cooperate with Foundation in development of its fund-raising programs and campaigns, including provision of information, data, plans, facilities for meetings on College campus, and such other materials and services as may reasonably be necessary for the successful conduct of fund-raising programs and campaigns.

- D. Cooperate with Foundation in its public relations program among donors and prospective donors regarding Foundation's functions.
- E. College shall not less than annually provide Foundation with its projects, programs, goals and objectives for Foundation's consideration in developing fund-raising programs and campaigns for College's benefit and/or in distributing undesignated funds to College.

IV. **Operational Considerations**

- A. Foundation and College agree that at all times and for all purposes of this agreement, that Foundation in the performance of this agreement and other activities to be undertaken by Foundation shall act in an independent, separately legal capacity and not as an agent or representative of College. Foundation and College shall be responsible for their own acts and responsible to each other for any negligent acts which cause damage to each other. This agreement shall not be construed to effectuate a merger of the College and the Foundation. At all times, the College and Foundation shall be operated as separate and distinct entities, each with ultimate control and autonomy of their operations.
- B. Foundation acknowledges that endowment assets currently held by College and previously donated to College as recipient will continue to be managed, invested and the income thereof to be disbursed and dedicated and to be otherwise the responsibility of College, unless transfers of such assets are specifically and individually authorized by the State of Wyoming.

V. **Assignment**

- A. This agreement is not assignable by Foundation, either in whole or in part, without prior written approval of Board of Trustees, nor by College without the prior written approval of Foundation Board of Directors.

VI. **Amendments and Notices**

- A. No amendment to this agreement shall be valid unless made in writing and signed by both parties.

1. No oral understandings or agreements not incorporated herein and no alterations or variations of the terms hereof unless made in writing between both parties shall be binding on either of the parties.
- B. All official notices required under this agreement shall be given as follows:
1. Notice to College – College President or designee
 2. Notice to Foundation – Executive Director, NWC Foundation

VII. Termination

- A. If either party desires to terminate the contract, that party shall so notify the other party of its intent to terminate the agreement by providing written notice to the other party at least sixty (60) days in advance of the intended termination. Prior to the expiration of the 60 days, the parties shall meet, either directly, through their presidents, members of their boards of directors, or through selective representatives to discuss the reasons for the potential termination and any possible resolutions. If, prior to the expiration of the 60 days, the parties have not reached some agreement as to the resolution of their reasons for termination of the agreement, the party having given notice of the termination shall be entitled to so terminate the agreement by delivering in writing a notice of termination after the expiration of the 60 days.

VIII. Enforcement

- A. This agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the State of Wyoming.

IX. Other

- A. This agreement shall not be deemed a waiver of any immunity available to either party hereto, including the sovereign, common law, and statutory immunity of the College, and of its agents and employees, and the charitable and statutory immunity of the Foundation, and of its agents and employees.

- B. This agreement embodies the entire agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this agreement shall supersede all previous communications, representations, or agreements, either written or oral, with regard to the organizational relationships between the parties hereto.

IN WITNESS WHEREOF, this agreement has been executed by and on behalf of the parties hereto on this 13th day of November, 2000.

**BOARD OF TRUSTEES
NORTHWEST COLLEGE**

Laurence D. Earhart

President

[Signature]

Vice-President/Secretary

**BOARD OF DIRECTORS
NORTHWEST COLLEGE FOUNDATION**

Richard S. Nelson

President

Steve Bonner

Secretary