

**BOARD OF TRUSTEES OF THE NEBRASKA STATE COLLEGES**  
**ITEMS FOR DISCUSSION AND ACTION\ACADEMIC AND PERSONNEL**

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**ACTION:** **Approve Revised Wayne State Foundation Agreement**

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The Chancellor has worked with the Executive Director of the Wayne State Foundation to update the current "Collaborative Agreement" between the Foundation and the Board of Trustees for the Nebraska State College System. The proposed revisions were discussed by the Foundation Board during their June 2022 meeting and approved unanimously at the September 2022 meeting. The significant changes to the Agreement include:

- Affirming that the Board of Trustees has primary oversight over all employees (including employment, compensation and evaluation);
- Establishing that the College President will identify the fund-raising priorities (i.e., capital projects, scholarships, etc.) and then collaborate with the Foundation to develop strategies for supporting these priorities;
- Ensuring that the Foundation consults with the Chancellor and President on the acquisition of all real estate;
- Formation of a President & College Executive Expense Account of \$25,000 annually, and allow for carrying forward of these funds not to exceed a pool of \$50,000 in any given year;
- Reducing the Chancellor Support Account from \$1,500 to \$500; and,
- Formalizing an annual report for in-kind support from the College to support Foundation operations, including the cost of office space, access to central services, information technology services, college relations and marketing services, campus facility rental cost, human resource services, employee benefit access, and insurance coverage.

The Chancellor recommends approval of the updated Agreement with an intent to re-evaluate and update it on a routine basis.

The System Office and Wayne State College recommend approval of the Revised Wayne State Foundation Agreement.

**ATTACHMENTS:**

- WS Foundation Agreement with Changes (PDF)
- WSC Foundation Agreement Clean (PDF)

## Collaborative Agreement

This Agreement is made by and between the Board of Trustees of the Nebraska State ~~Colleges~~College System, hereinafter referred to as the "Board" and the Wayne State Foundation Board of Trustees, hereinafter referred to as the "Foundation".

This Agreement identifies a commitment between the Board and the Foundation to engage in cooperative practices and exchange benefits for the betterment of Wayne State College, hereinafter referred to as the "College".

Nothing in this Agreement shall be interpreted to supersede the articles and by-laws of the Wayne State Foundation.

### Roles

#### **Role of the Foundation**

As stated in the articles of incorporation, the Foundation is a separately incorporated, tax exempt 501 (c)(3) non-profit organization created to raise, manage, distribute, and steward private resources to support the various missions of ~~the Wayne State~~ College. The Foundation is responsible for identifying and nurturing relationships with potential donors and other friends of ~~Wayne State~~the College (hereinafter referred to as the College) and the NSCS. The Foundation shall solicit cash, securities, real and intellectual property, and other private resources for the support of the College. The Foundation ~~is~~Board of Trustees and its Executive Committee are responsible for control and management of Foundation assets.

The Foundation exists to raise and manage private resources supporting the mission and the long-term priorities of the College, to provide opportunities for students, faculty, and staff and to provide a margin of institutional excellence beyond what is otherwise possible.

The Foundation is dedicated to building the endowment for the support of the College and in addressing, through financial support, the academic and other priorities of the College as submitted by the College President, hereinafter referred to as the "President," to the Foundation.

The Foundation shall employ personnel experienced in planning for and managing private contributions to work with the ~~Nebraska State College System (NSCS)~~NSCS and the College. Such employees are not employees of the College, ~~or the Board, or the -Nebraska State College System~~NSCS and are not afforded tenure or rank.

#### **Role of the Board**

The Board is legally responsible for the performance and oversight of all aspects of the ~~Nebraska State College System~~NSCS, including Chadron State College, Peru State College, Wayne State College and the System Office. The Board is responsible for the employment, compensation, and evaluation of all College employees.

The Board directs the strategic plan, priorities and operations for the NSCS.

### Role of the Chancellor

The Chancellor is responsible for overseeing the NSCS strategic plan, and for the leadership and operations for the ~~Nebraska State College System~~ NSCS.

The Chancellor acts as the liaison between the Board and the Foundation and is responsible for communicating the priorities and long-term plans for the ~~Colleges~~ state colleges to the Foundation either directly or through the ~~College~~ President.

The Chancellor is responsible for overseeing the employment, compensation, and evaluation of all the ~~Presidents~~ college presidents.

### Role of the ~~College~~ President

The ~~College~~ President is responsible for setting priorities and long-term plans for the College in conjunction with the Board and communicating such priorities and long-term plans to the Foundation.

The President is responsible for overseeing the mission, and for the leadership and operations of the College. The ~~College~~ President is responsible for identifying fund-raising priorities and needs for the Foundation to operationalize.

### -Responsibilities

#### Foundation Responsibilities

The Foundation, ~~in consultation with the College community and the President~~, is responsible for planning and executing a comprehensive fund-raising and donor-acquisition ~~programs~~ program in support of the College's mission and priorities as articulated by the College President. These programs may include annual giving, major gifts, planned gifts, special projects, and other campaigns as appropriate.

The Foundation is responsible for the control and management of all its assets, including the prudent management of all gifts consistent with donor intent and Internal Revenue Service (IRS)-requirements.

The Foundation shall continue to 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 Prudent Management of Institutional Funds Act (UPMIFA).

The Foundation shall continue to engage an independent accounting firm annually to conduct an audit of the Foundation's financial and operational records and shall provide the College, the President, and the Chancellor a copy of the annual audited financial statements, including the management letters and any audit findings by October 1 each year, in order to allow for inclusion with the NSCS Comprehensive Audit. The parties agree to revise the October 1 deadline as may be necessary to accommodate the schedule established by the State Auditor of Public Accounts. ~~The Foundation has provided annual audits of the Foundation to the College in a timely manner since 2004 when GASB 14, which was amended by GASB 39 and 61 was established.~~ The Foundation shall continue to provide the President financial reports prepared for the Foundation's quarterly Executive Committee meetings. The President may share these reports with the Chancellor.

The Foundation is responsible for employment, compensation, supervision and evaluation of all its employees, ~~including, but not limited to the Chief Executive Officer, Director of Athletic Development, Director of Alumni Relations, and Director of Major Gifts, and Foundation Office Assistants.~~ As part of its responsibilities as an employer, the Foundation shall adopt appropriate personnel policies, and conduct any necessary and appropriate personnel orientation and training. Paid leave, holiday benefits and overtime provisions shall be established consistent with those established for College employees. The Foundation understands and agrees that the Board and the College are not responsible for the Foundation's obligations as an employer, although the Chancellor and President may provide input to the Foundation regarding the performance of the Chief Executive Officer and other Foundation employees.

The Foundation may explore opportunities, including acquisition and management of real estate on behalf of the College and the Board for future allocation, transfer, or use.

The Foundation ~~shall consult with~~ may serve as an instrument for entrepreneurial activities for the Chancellor College and President the Board and may engage in advance of any such activities as purchasing, developing, or managing real estate acquisition for College expansion.

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 shall provide a portion of its unrestricted funds to a discretionary fund for the College as described below to support for the President and the Chancellor;

#### President's Automobile

The Foundation shall provide the President with an automobile suitable for the President to be used for College business and personal use. The President may use their President's & College Executive Expense Account to pay for the use of personal gas. Receipts for all expenses with appropriate documentation consistent with the IRS requirements shall be submitted to the Foundation.

#### President & College's Executive Expense Account

The Foundation shall provide the President and College's Executive Expense Account President with an automobile suitable for the President and an annual expense account of no less than ~~Twenty Five Thousand Five Hundred Dollars (\$25,500)~~ Twenty Five Thousand Dollars (\$25,000) annually. The Foundation will deposit no less than ~~Two Thousand Five Hundred Dollars (\$2,500)~~ into the account each quarter. Such funds may to be used for expenditures such as: 1) the President's spouse to travel to Foundation and alumni events; 2) , dues for community organizations; 3) , flowers for funerals in the College and local community; 4) , off-campus banquets or campus events not supported by state funds; 5) , off-campus wi-fi service for laptop during travel; 6) , and office publications; 6) presidential expenses; 7) student and faculty research; 8) student travel to conferences; and/or other activities or services directly impacting the College, etc. The account will be managed by the Foundation. The President will submit requests for payments to the Foundation explaining the request for payment by attaching supporting information and/or receipts in accordance with IRS Receipts requirements. ~~for all expenses with appropriate documentation consistent with the IRS requirements shall be submitted to the~~

Foundation: Funds not expended from the previous year may be carried forward the following year with the total executive expense account not to exceed \$50,000.

~~The Foundation shall provide a college support account of no less than Fifteen Thousand Dollars (\$15,000) to be used for presidential expenses, student and faculty research, campus events not supported by state funds, student travel to conferences, etc. The account will be managed by the Foundation Office. The President will submit requests for payments to the Foundation Office explaining the request for payment by attaching supporting information and/or receipts in accordance with IRS requirements.~~

#### Chancellor Support Account

The Foundation shall also establish an annual expense account of no less than ~~Fifteen-Five~~ Hundred Dollars (\$1,500) for the Chancellor to be used for activities in support of the College. The account will be managed by the Foundation Office. The Chancellor will submit requests for payments to the Foundation Office explaining the request for payment by attaching supporting information and/or receipts in accordance with IRS requirements. Receipts for all expenses with appropriate documentation consistent with the IRS requirements shall be submitted to the Foundation to receive reimbursement.

~~The Foundation shall provide a college support account to be used for presidential expenses, student and faculty research, campus events not supported by state funds, student travel to conferences, etc. The account will be managed by the Foundation Office. The President will submit requests for payments to the Foundation Office explaining the request for payment by attaching supporting information and/or receipts in accordance with IRS requirements.~~

#### Senator's' Reception

The Foundation shall provide one-third of the payments in support of the NSCS's annual Senator's' reception.

#### NSCS Teaching Excellence Award

The Foundation shall provide to the NSCS the ~~\$~~Three Thousand Dollars (\$3,000) to fund the annual NSCS Teaching Excellence Award when the recipient is a faculty member of the College.

#### Personnel Expense Reimbursement

The Foundation agrees to reimburse the College in a timely manner for all expenses that the College incurs as a result of the terms of this Agreement, including but not limited to, unemployment benefits paid on behalf of the Foundation's previous employees, the proportionate share of worker's compensation premiums paid on behalf of the Foundation's employees, expenses for central office services as described in this Agreement, additional insurance premium expenses, retirement contributions for Foundation employees, employee benefits for Foundation employees, and all other related payroll expenses.

The Foundation recognizes that the Board is the employer of the Chancellor, the President, College employees and employees in the System Office. The Foundation will continue to respect that employer/employee relationship and agrees not to interfere or insert itself into employment matters between the Board and the Board's employees. The Foundation and the College mutually agree not to

recruit or hire Foundation or College employees without first consulting with the President or Executive Director.

Except for reimbursing the President's spouse for travel expenses related to accompanying the President on College business, the Foundation agrees that it shall not enter into any Agreements or contracts with the Board's employees, or family members of Board employees to provide income, deferred compensation, or provide any other taxable benefits as defined by the Internal Revenue Service without prior written approval by the Chancellor.

The Foundation agrees that the Board's employees shall not be appointed as board members or directors for the Foundation.

### **Board's Responsibilities**

The Board shall make available to all College employees, the opportunity for payroll deduction for donations to be directed to the Foundation.

The Board shall provide the Foundation with the following resources and support:

- Office space including utilities, custodial supplies, custodial services, maintenance materials and labor (including grounds) free of charge.

- ~~Access~~ The Board shall also provide access to central office services including, but not limited to, telephone, facsimile, email, and photocopier and computer support services. The Foundation agrees to reimburse the College for central office service expenses which exceed the budget allocated by the President annually ~~College annually in support of the Development and Alumni Office~~ Foundation.

~~The Board shall include the Foundation as an additional insured on its general liability, cyber liability, property, and directors and officer's (educator's legal liability) insurance coverage at no charge. The parties agree that if the Foundation causes, through any act or omission, insurance premiums to increase, the Foundation shall reimburse the Board for such premium increases.~~

- Information Technology services including but not limited to basic software licensing, email, technical support, report development, network and internet access, and cybersecurity assistance.

- College Relations and Marketing services as staff time allows.

- Campus facility rental costs will be waived.

- Human Resource services for the posting of vacancies as well as payroll processing for Foundation employees in accordance with the College's normal policies and procedures. Provisions for accrual, use, and payment of leave hours must also be in accordance with College's normal policies and procedures. Leave requests for the Chief Executive Officer shall be approved by the Foundation Board Chair via email which will then be forwarded to the President's Administrative Assistant to approve/process in the payroll system on their behalf.

- Payment of Employee Expense.

During the period that this Agreement is in effect, the Board shall make an annual payment on or about July 1 to the Foundation to defray Foundation employee expenses.

Payments for 2021-22 shall be \$190,882 and thereafter shall be increased annually by the same percentage the Board increases unionized College professional staff salaries plus one percent (1%). For the first year of this Agreement, the Board shall make a prorated annual payment of \$142,600 on October 1, 2018. This amount is based on an annualized amount of \$173,000, which serves as the basis for future annual payments. Payments in 2019 and thereafter shall be increased annually by the same percentage the Board increases unionized College professional staff salaries plus one percent (1%).

Wages must be paid by direct deposit or other means of electronic transfer. All Foundation payroll expenses shall be reimbursed to the College.

•Employment benefit access. The Board shall allow Foundation employees access to participate in the College plans for TIAA/CREF retirement programs; medical/dental, vision, long term disability, and life insurance plans; the immediate family tuition remission program; the employee- tuition waiver program; and, Employee Assistance Program services in the same manner as College employees. The Foundation agrees to reimburse the College for the employer's share of the Foundation employee benefits.

•Financial aid award~~The Board shall provide payroll processing services for Foundation scholarships which includes award employees in accordance with the College's normal policies and procedures. Wages must be paid by direct deposit or other means of electronic transfer. All thank you letter protocols. The Foundation agrees payroll expenses shall be reimbursed to~~ reimburse the College for printing and postage expenses which exceed the budget allocated by the President annually.

•Student worker labor to assist in Foundation activities. The Foundation agrees to reimburse the College for expenses which exceed the budget allocated by the President annually.

•Insurance coverage as an named insured on its general liability, cyber liability, all insurance related to travel, and directors and officer's (educator's legal liability) insurance coverage at no charge, in such amounts/limits as the Board purchases and may be commercially reasonable. In the event the Foundation has a situation that may give rise to a claim under any of the insurance policies, the Foundation agrees to notify the Board in a timely manner consistent with the terms of the policy and assist in reporting the matter to the appropriate insurer(s). The Foundation shall be responsible for any retentions/deductibles on the policies as a result of any claim submitted. The parties agree that if the Foundation causes, through any act or omission, insurance premiums to increase, the Foundation shall reimburse the Board for such premium increases. The Foundation is solely responsible for insuring any real and personal property owned by the Foundation except that the Board will maintain insurance coverage for any items owned by the Foundation when on loan to the College.

~~•Payment for Employee Expense. During the period that this Agreement is in effect, the Board shall make an annual payment on or about July 1 to the Foundation to defray Foundation employee expenses, two percent (2%) annually.~~

•Misc. The Board may provide other benefits, or services or staff support to assist the Foundation's work at the discretion of the Chancellor or President.

Costs associated with the resources noted above will be reported annually by the President to the Foundation.

### General Terms

#### **Hold Harmless**

The Foundation agrees to protect, save and hold the Board, all Directors, agents, officers, representatives and employees thereof, forever harmless for any damages, costs or charges imposed for violations of any law or ordinance occasioned by the negligence, affirmative act or omission of the Foundation, including the Foundation's Directors, agents, officers, representatives and employees. The Agreement to hold harmless shall include, but not be limited to, reimbursement for any and all losses, costs, damages, liability or expenses including attorney's fees and litigation costs arising from this collaborative relationship and the terms of this Agreement.

The Board agrees to protect, save and hold the Foundation, all Directors, agents, officers, representatives and employees thereof, forever harmless for any damages, costs or charges imposed for violations of any law or ordinance occasioned by the negligence, affirmative act or omission of the Board, including the Board's Directors, agents, officers, representatives and employees. The Agreement to hold harmless shall include, but not be limited to, reimbursement for any and all losses, costs, damages, liability or expenses including attorney's fees and litigation costs arising from this collaborative relationship and the terms of this Agreement.

#### **Meetings**

To ensure effective achievement of the items of the Agreement, the Chancellor and/or the President shall meet regularly with Foundation officers and/or employees to foster and maintain productive relationships, share information, and to ensure open and continuing communications and alignment of priorities.

#### **Amendment**

This Agreement may be amended upon written agreement of the parties.

#### **Termination**

Either party may, upon ninety (90) days written notice to the other party, terminate this Agreement. Notwithstanding the foregoing, 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 thirty (30) days' time after receiving written notice of the default

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers/officer's effective November 10, 2022 ~~October 1, 2018~~.



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Chair of the Board of Trustees  
On Behalf of the Board of Trustees of the  
Nebraska State Colleges  
~~Gary Bieganski~~ ~~John Chaney~~ Jess Zeiss

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Date

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President of the Board of Trustees  
On Behalf of the Wayne State Foundation  
Barbara K. Kanter  
Donald Koeber

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Date

## **Collaborative Agreement**

This Agreement is made by and between the Board of Trustees of the Nebraska State Colleges, hereinafter referred to as the **“Board”** and the Wayne State Foundation Board of Trustees, hereinafter referred to as the **“Foundation”**.

This Agreement identifies a commitment between the Board and the Foundation to engage in cooperative practices and exchange benefits for the betterment of Wayne State College., hereinafter referred to as the **“College”**.

Nothing in this Agreement shall be interpreted to supersede the articles and by-laws of the Foundation.

### **Roles**

#### **Role of the Foundation**

As stated in the articles of incorporation, the Foundation is a separately incorporated, tax exempt 501 (c)(3) non-profit organization created to raise, manage, distribute, and steward private resources to support the various missions of the College. The Foundation is responsible for identifying and nurturing relationships with potential donors and other friends of the College. The Foundation shall solicit cash, securities, real and intellectual property, and other private resources for the support of the College. The Foundation is responsible for control and management of Foundation assets.

The Foundation exists to raise and manage private resources supporting the mission and the long-term priorities of the College, to provide opportunities for students, faculty, and staff and to provide a margin of institutional excellence beyond what is otherwise possible.

The Foundation is dedicated to building the endowment for the support of the College and in addressing, through financial support, the academic and other priorities of the College as submitted by the College President, hereinafter referred to as the **“President,”** to the Foundation.

The Foundation shall employ personnel experienced in planning for and managing private contributions to work with the Nebraska State College System (NSCS) and the College. Such employees are not employees of the College, the Board, or the Nebraska State College System and are not afforded tenure or rank.

#### **Role of the Board**

The Board is legally responsible for the performance and oversight of all aspects of the NSCS, including Chadron State College, Peru State College, Wayne State College and the System Office. The Board is responsible for the employment, compensation, and evaluation of all College employees. The Board directs the strategic plan, priorities and operations for the NSCS.

#### **Role of the Chancellor**

The Chancellor is responsible for overseeing the NSCS strategic plan, and for the leadership and operations for the NSCS.

The Chancellor acts as the liaison between the Board and the Foundation and is responsible for communicating the priorities and long-term plans for the Colleges to the Foundation either directly or through the President.

The Chancellor is responsible for overseeing the employment, compensation, and evaluation of all the Presidents.

### **Role of the President**

The President is responsible for setting priorities and long-term plans for the College in conjunction with the Board and communicating such priorities and long-term plans to the Foundation. The President is responsible for overseeing the mission, and for the leadership and operations of the College. The President is responsible for identifying fund-raising priorities and needs for the Foundation to operationalize.

## **Responsibilities**

### **Foundation Responsibilities**

The Foundation is responsible for planning and executing comprehensive fund-raising and donor-acquisition programs in support of the College's mission and priorities as articulated by the College President. These programs may include annual giving, major gifts, planned gifts, special projects, and other campaigns as appropriate.

The Foundation is responsible for the control and management of all its assets, including the prudent management of all gifts consistent with donor intent and Internal Revenue Service (IRS) requirements.

The Foundation shall continue to 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 Prudent Management of Institutional Funds Act (UPMIFA).

The Foundation shall continue to engage an independent accounting firm annually to conduct an audit of the Foundation's financial and operational records and shall provide the College, the President, and the Chancellor a copy of the annual audited financial statements, including the management letters and any audit findings by October 1 each year, in order to allow for inclusion with the NSCS Comprehensive Audit. The parties agree to revise the October 1 deadline as may be necessary to accommodate the schedule established by the State Auditor of Public Accounts. The Foundation shall continue to provide the President financial reports prepared for the Foundation's quarterly Executive Committee meetings. The President may share these reports with the Chancellor.

The Foundation is responsible for employment, compensation, supervision and evaluation of all its employees. As part of its responsibilities as an employer, the Foundation shall adopt appropriate personnel policies, and conduct any necessary and appropriate personnel orientation and training. Paid leave, holiday benefits and overtime provisions shall be established consistent with those established for College employees. The Foundation understands and agrees that the Board and the College are not responsible for the Foundation's obligations as an employer, although the Chancellor and President may provide input to the Foundation regarding the performance of the Chief Executive Officer and other Foundation employees.

The Foundation may explore opportunities, including acquisition and management of real estate on behalf of the College and the Board for future allocation, transfer, or use. The Foundation shall consult with the Chancellor and President in advance of any real estate acquisition.

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 shall provide a portion of its unrestricted funds to a discretionary fund for the College as described below to support:

**President's Automobile**

The Foundation shall provide the President with an automobile suitable for the President to be used for College business and personal use. The President may use their President's & College Executive Expense Account to pay for the use of personal gas. Receipts for all expenses with appropriate documentation consistent with the IRS requirements shall be submitted to the Foundation.

**President & College Executive Expense Account**

A President and College Executive Expense Account of no less than Twenty Five Thousand Dollars (\$25,000) annually to be used for expenditures such as: 1) the President's spouse to travel to Foundation and alumni events; 2) , dues for community organizations; 3) , flowers for funerals in the College and local community; 4) , off-campus banquets or campus events not supported by state funds; 5) off-campus Wi-Fi service for laptop during travel; 6) office publications; 7) presidential expenses; 8) student and faculty research; 9) student travel to conferences; and/or other activities or services directly impacting the College. The account will be managed by the Foundation. The President will submit requests for payments to the Foundation explaining the request for payment by attaching supporting information and/or receipts in accordance with IRS requirements. Funds not expended from the previous year may be carried forward the following year with the total executive expense account not to exceed \$50,000.

**Chancellor Support Account**

The Foundation shall also establish an annual expense account of no less than Five Hundred Dollars (\$500) for the Chancellor to be used for activities in support of the College. The account will be managed by the Foundation Office. The Chancellor will submit requests for payments to the Foundation Office explaining the request for payment by attaching supporting information and/or receipts in accordance with IRS requirements.

**Senators' Reception**

The Foundation shall provide one-third of the payments in support of the NSCS's annual Senators' reception.

**NSCS Teaching Excellence Award**

The Foundation shall provide to the NSCS Three Thousand Dollars (\$3,000) to fund the annual NSCS Teaching Excellence Award when the recipient is a faculty member of the College.

**Personnel Expense Reimbursement**

The Foundation agrees to reimburse the College in a timely manner for all expenses that the College incurs as a result of the terms of this Agreement, including but not limited to, unemployment benefits paid on behalf of the Foundation's previous employees, the proportionate share of worker's compensation premiums paid on behalf of the Foundation's employees, expenses for central office services as described in this Agreement, additional insurance premium expenses, retirement contributions for Foundation employees, employee benefits for Foundation employees, and all other related payroll expenses.

The Foundation recognizes that the Board is the employer of the Chancellor, the President, College employees and employees in the System Office. The Foundation will continue to respect that employer/employee relationship and agrees not to interfere or insert itself into employment matters between the Board and the Board's employees. The Foundation and the College mutually agree not to recruit or hire Foundation or College employees without first consulting with the President or Executive Director.

Except for reimbursing the President's spouse for travel expenses related to accompanying the President on College business, the Foundation agrees that it shall not enter into any Agreements or contracts with the Board's employees, or family members of Board employees to provide income, deferred compensation, or provide any other taxable benefits as defined by the Internal Revenue Service without prior written approval by the Chancellor.

The Foundation agrees that the Board's employees shall not be appointed as board members or directors for the Foundation.

### **Board's Responsibilities**

The Board shall make available to all College employees, the opportunity for payroll deduction for donations to be directed to the Foundation.

The Board shall provide the Foundation with the following resources and support:

- **Office space** including utilities, custodial supplies, custodial services, maintenance materials and labor (including grounds) free of charge.
- **Access to central services** including, but not limited to, telephone, facsimile, email, and photocopier. The Foundation agrees to reimburse the College for central office service expenses which exceed the budget allocated by the President annually.
- **Information Technology services** including but not limited to basic software licensing, email, technical support, report development, network and internet access, and cybersecurity assistance.
- **College Relations and Marketing services as staff time allows.**
- **Campus facility rental costs** will be waived.
- **Human Resource services** for the posting of vacancies as well as payroll processing for Foundation employees in accordance with the College's normal policies and procedures. Provisions for accrual, use, and payment of leave hours must also be in accordance with College's normal policies and procedures. Leave requests for the Chief Executive Officer shall be approved by the Foundation Board Chair via email which will then be forwarded to the President's Administrative Assistant to approve/process in the payroll system on their behalf.
- **Payment of Employee Expense.** During the period that this Agreement is in effect, the Board shall make an annual payment on or about July 1 to the Foundation to defray Foundation employee expenses.

Payments for 2021-22 shall be \$190,882 and thereafter shall be increased annually by the same percentage the Board increases unionized College professional staff salaries. Wages must be

paid by direct deposit or other means of electronic transfer. All Foundation payroll expenses shall be reimbursed to the College.

•**Employment benefit access.** The Board shall allow Foundation employees access to participate in the College plans for TIAA retirement programs; medical/dental, vision, long term disability, and life insurance plans; the immediate family tuition remission program; the employee tuition waiver program; and, Employee Assistance Program services in the same manner as College employees. The Foundation agrees to reimburse the College for the employer's share of the Foundation employee benefits.

•**Financial aid award** processing for Foundation scholarships which includes award and thank you letter protocols. The Foundation agrees to reimburse the College for printing and postage expenses which exceed the budget allocated by the President annually.

•**Student worker labor** to assist in Foundation activities. The Foundation agrees to reimburse the College for expenses which exceed the budget allocated by the President annually.

•**Insurance coverage** as a named insured on its general liability, cyber liability, all insurance related to travel, and directors and officer's (educator's legal liability) insurance coverage at no charge, in such amounts/limits as the Board purchases and may be commercially reasonable. In the event the Foundation has a situation that may give rise to a claim under any of the insurance policies, the Foundation agrees to notify the Board in a timely manner consistent with the terms of the policy and assist in reporting the matter to the appropriate insurer(s). The Foundation shall be responsible for any retentions/deductibles on the policies as a result of any claim submitted. The parties agree that if the Foundation causes, through any act or omission, insurance premiums to increase, the Foundation shall reimburse the Board for such premium increases. The Foundation is solely responsible for insuring any real and personal property owned by the Foundation except that the Board will maintain insurance coverage for any items owned by the Foundation when on loan to the College.

•**Misc.** The Board may provide other benefits, services or staff support to assist the Foundation's work at the discretion of the Chancellor or President.

Costs associated with the resources noted above will be reported annually by the President to the Foundation.

### General Terms

#### **Hold Harmless**

The Foundation agrees to protect, save and hold the Board, all Directors, agents, officers, representatives and employees thereof, forever harmless for any damages, costs or charges imposed for violations of any law or ordinance occasioned by the negligence, affirmative act or omission of the Foundation, including the Foundation's Directors, agents, officers, representatives and employees. The Agreement to hold harmless shall include, but not be limited to, reimbursement for any and all losses, costs, damages, liability or expenses including attorney's fees and litigation costs arising from this collaborative relationship and the terms of this Agreement.

The Board agrees to protect, save and hold the Foundation, all Directors, agents, officers, representatives and employees thereof, forever harmless for any damages, costs or charges imposed for violations of any law or ordinance occasioned by the negligence, affirmative act or omission of the

Board, including the Board's Directors, agents, officers, representatives and employees. The Agreement to hold harmless shall include, but not be limited to, reimbursement for any and all losses, costs, damages, liability or expenses including attorney's fees and litigation costs arising from this collaborative relationship and the terms of this Agreement.

**Meetings**

To ensure effective achievement of the items of the Agreement, the Chancellor and/or the President shall meet regularly with Foundation officers and/or employees to foster and maintain productive relationships, share information, and to ensure open and continuing communications and alignment of priorities.

**Amendment**

This Agreement may be amended upon written agreement of the parties.

**Termination**

Either party may, upon ninety (90) days written notice to the other party, terminate this Agreement. Notwithstanding the foregoing, 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 thirty (30) days' time after receiving written notice of the default

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officer's effective November 10, 2022

\_\_\_\_\_  
Chair of the Board of Trustees  
On Behalf of the Board of Trustees of the  
Nebraska State Colleges  
John Chaney

\_\_\_\_\_  
Date

\_\_\_\_\_  
President of the Board of Trustees  
On Behalf of the Wayne State Foundation  
Donald Koeber

\_\_\_\_\_  
Date