

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

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**ACTION:** **Approve Peru State College Foundation Agreement**

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The Chancellor has worked with the Interim Executive Director and current Peru State Foundation Board President to update the existing "Collaborative Agreement" between the Foundation and the Board of Trustees for the Nebraska State College System. The Foundation Board discussed the proposed revisions during their August 2023 meeting and approved them. The primary modifications to the Agreement seek to bring the Agreement in closer alignment with the Wayne State Foundation Agreement, which the Board approved during the November 2022 meeting.

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 Peru State College recommend approval of the Peru State College Foundation Agreement.

**ATTACHMENTS:**

- PSC Foundation Agreement 2023 (PDF)

## **COLLABORATIVE AGREEMENT**

This Agreement is made by and between the Board of Trustees of the Nebraska State Colleges (the “Board”) and the Peru State College Foundation, a Nebraska Nonprofit Corporation (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 Peru State College (the “College”).

Nothing in this Agreement shall be interpreted to supersede the articles of incorporation and bylaws of the Foundation.

This Agreement shall become effective upon the signature of the parties and shall continue until terminated as provided by the terms of this Agreement.

### **Roles**

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

The Foundation is a Nebraska Nonprofit Corporation and operated for the benefit of, and in connection with, the College. The Foundation is tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), as a supporting organization under section 509(a)(3) of the Code. In connection with such purpose, the Foundation:

1. Works with the Board and the College to identify the College’s needs, both short-term and long-term, and provide input on the strategic plan;
2. Promotes the College’s educational programs, faculty, employees, and students, and encourages the attendance of worthy and deserving students through scholarships and student loans; and,
3. Solicits and accepts gifts, grants, devises, and bequests of real and personal property, and holds, administers, uses, and disposes of the same for the accomplishment and furtherance of its purpose to support the College.

In connection with its fundraising and asset management activities, the Foundation retains personnel experienced in planning for and managing contributions.

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

The Board is responsible for the performance and oversight of all aspects of the Nebraska State College System (the “NSCS”), including the College, Chadron State College, Wayne State College, and the NSCS Office.

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

The Board is responsible for the employment, compensation, and evaluation of all NSCS employees.

### **Role of the Chancellor**

The NSCS Chancellor (the “Chancellor”) is responsible for overseeing the NSCS strategic plan and for the leadership and operations of the NSCS.

The Chancellor acts as the official liaison between the Board and the Foundation and is responsible for communicating the Board’s priorities and long-term plans for the College to the Foundation, either directly or through the President of the College (the “President”).

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

### **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 fundraising priorities and needs for the Foundation to operationalize.

## **Responsibilities**

### **Foundation’s Responsibilities**

The Foundation is responsible for planning and executing comprehensive fundraising and donor acquisition programs in support of the College’s mission and priorities as articulated by the 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 its assets, including the prudent management of all gifts consistent with donor intent, Internal Revenue Service (IRS) requirements, and investment standards governing nonprofits under Nebraska law.

The Foundation is responsible for the performance and oversight of all aspects of its operations and is governed by its bylaws.

The Foundation shall 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 engage an independent accounting firm annually to conduct an audit of the Foundation's financial and operational records and shall provide the Chancellor, President and College 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. In addition to the annual audit, the Foundation shall provide reports, upon request, to the Chancellor and the President summarizing the results of donations, expenditures, and specific initiatives.

The Foundation is responsible for the employment, compensation, supervision, and evaluation of all its employees. As part of its responsibilities as an employer, the Foundation shall adopt 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 Foundation employees.

The Chancellor, President, and Board agree to respect the Foundation's employer/employee relationship and not to interfere with employment matters between the Foundation and its employees. The Foundation understands and agrees that the Board and the College are not responsible for the Foundation's obligations as an employer.

The Foundation may explore opportunities, including the acquisition and management of real estate for future allocation, transfer, or use by the College. 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 establish and enforce policies to protect donor confidentiality and rights.

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.

President's Discretionary Funds

Discretionary funds for the President and Chancellor for activities in support of the College. The President may use these funds to pay for the use of personal gas in the automobile provided by the Foundation. Funds may also be used for President's spouse to travel to Foundation and alumni events; dues for community organizations; flowers for funerals in the College and local community; off-campus banquets or campus events not supported by state funds; off-campus Wi-Fi service for laptop during travel; office publications; presidential expenses; student and faculty research;

student travel to conferences; and/or other activities or services directly impacting the College. The account will be managed by the Foundation. Receipts for all expenses with appropriate documentation consistent with the IRS requirements shall be submitted to the Foundation.

#### Senators' Reception

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

#### NSCS Teaching Excellence Award

The Foundation shall provide One Thousand Dollars (\$1,000) each year to the Peru State College recipient of the Teaching Excellence Award, or Three Thousand Dollars (\$3,000) to the PSC faculty member when they are selected as the NSCS Teaching Excellence Award recipient.

The Foundation agrees that once its calendar year budget is set, the Foundation will provide a copy of the budget document to the Chancellor and President.

#### Personnel Expense Reimbursement

The Foundation agrees to reimburse the College in a timely manner for 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 agrees 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 each other.

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 other taxable benefits under the IRS Code without prior written approval of the Chancellor.

The Foundation agrees that the Board's employees shall not serve as board members or directors of the Foundation.

#### **Board's Responsibilities**

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, 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.
- Hosting of the Foundation's website.
- 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 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. 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's TIAA retirement programs; medical/dental, vision, long-term disability, and life insurance plans; the immediate family tuition remission program; the 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 Foundation employee benefits. The Board shall make available to all College employees, the opportunity for payroll deduction for donations to be directed to the Foundation.
- Financial aid award processing for Foundation scholarships which includes award and thank you letter protocols. The Foundation agrees to distribute student thank you letters to donors on behalf of the College.
- Student worker labor to assist in Foundation activities. The Foundation agrees to reimburse the College for expenses which exceed the budget approved by the President annually.
- Insurance coverage as a named insured on its general liability, cyber liability, all insurance related to travel, and directors and officers (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. 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.

- The Board may provide other benefits or services 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 and all trustees, 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 a breach of the terms of this Agreement by the Foundation.

The Board agrees to protect, save and hold the Foundation and 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 trustees, 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 a breach of the term of this Agreement by the Board.

#### **Meetings**

To ensure effective achievement of the provisions of this Agreement, the Chancellor and/or the President shall meet regularly with the Foundation's officers, directors and/or employees to foster and maintain productive relationships, share information as appropriate, 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 effective \_\_\_\_\_, 2023.

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chair  
On Behalf of the Peru State College Foundation

\_\_\_\_\_  
Date