

MEMORANDUM OF UNDERSTANDING

University of Mary Washington and the University of Mary Washington Foundation

THIS AMENDED AND RE-STATED MEMORANDUM OF UNDERSTANDING (“Agreement”), entered into as of this 21st day of April, 2017, by and between the University of Mary Washington (the “University”) and the University of Mary Washington Foundation (the “Foundation”) provides as follows:

The University and the Foundation entered into an Amended and Restated Memorandum of Understanding (the “2012 MOU”) dated as of July 22, 2012. This Agreement replaces the 2012 MOU in its entirety.

This Agreement is intended to set forth guiding principles, policies and procedures that will contribute to the coordination of the activities of the University and the Foundation.

The Foundation was organized and incorporated in 1975 for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, foundations, and others for the benefit of UMW.

The UMWF exists to accept, manage, and administer private resources supporting the mission and priorities of UMW, and to provide opportunities for students and for a margin of institutional excellence unavailable with state funds. If requested by the University, Foundation staff and volunteers may agree to assist in raising money or other assets upon occasion.

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.

The Foundation is an independent and separately incorporated Virginia non-stock, non-profit Internal Revenue Code 501 (c) (3) corporation, and is responsible for receiving, managing and administering donations of cash, securities, real and intellectual property, and other private resources for the support of the University of Mary Washington; and managing such gifts in accordance with donor intent and its fiduciary responsibilities. Furthermore, in connection with its asset-management and real estate management activities, the Foundation retains personnel experienced in planning for and managing private contributions and works with the University to assist and receive advice regarding such activities. 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:

**Foundation Name, Seal and Letterhead
University of Mary Washington Foundation**

Consistent with its mission to help advance the plans and objectives of the University, the Foundation is granted the use of the name, University of Mary Washington; however, the Foundation will operate under its own seal and letterhead, and shall not use the University seal or other identifying marks in the promotion of its business and activities without the written approval of the University.

1. University Governance

- a. The Board of Visitors of the University of Mary Washington is responsible for overseeing the mission, leadership, and operations of the University.
- b. The Board of Visitors is responsible for setting priorities and long-term plans for the University of Mary Washington.
- c. The Board of Visitors is legally responsible for the performance and oversight of all aspects of the University of Mary Washington operations.
- d. The Board of Visitors is responsible for the employment, compensation, and evaluation of all University of Mary Washington employees, including the president.

2. The Foundation's Relationship to the Institution

- a. The Foundation is an independent 501 (c) (3) nonprofit organization created to receive, manage, administer, and steward private resources to support the various missions of the University of Mary Washington.
- b. The Foundation Board of Directors ("Board") is responsible for the control and management of all assets of the Foundation, including the prudent management of all gifts consistent with donor intent.
- c. 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's fiduciary responsibilities, including expectations of individual Board members based upon ethical guidelines and policies.
- d. The Foundation is responsible for the employment, compensation, and evaluation of all its employees, including the Foundation chief executive.
- e. The Foundation will hire its employees as may be required to perform the responsibilities and duties set forth in this document.
- f. 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 institution in compliance with state law and University policies or reimburse appropriate presidential expenditures. All such expenditures must comply with the Internal Revenue Code 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.

- g. The Foundation will supplement the salary and benefits of the University President by providing the University with funds sufficient to cover the difference between the salary designated in the University's employment agreement with the President and the amount specified in the Commonwealth's Appropriation Act, provided that 1) advance consultation and written approval for the supplement is sought by the University and obtained from the Foundation, both for the initial employment agreement and any subsequent changes in it that require the use of Foundation funds; and 2) any supplement to the salary or payment of benefits for the President paid by the Foundation will be reflected in a written agreement between the Foundation and the University prior to the supplement becoming effective.**
- h. The Foundation recognizes that the authority for permanently naming facilities and endowments rests with the University's Board of Visitors.**
- i. The Foundation will provide the University with an advance copy of any amendments, additions or deletions to its articles of incorporation or bylaws.**

3. The Institution's Relationship to the Foundation

- a. The University president is responsible for communicating University of Mary Washington priorities and long-term plans, as approved by the Board of Visitors, to the Foundation.**
- b. The University recognizes that the Foundation is a private corporation with the authority to keep all records and data confidential and consistent with the law.**
- c. The chief executive of the Foundation may be included as a member of the University President's cabinet and senior administrative team.**
- d. The University shall include representatives of the Foundation as active and prominent participants in the strategic planning for the University.**
- e. The President of the University shall serve as an ex-officio member of the Foundation Board as outlined in the Foundation's bylaws, and shall assume a prominent role in fund-raising activities for the University.**
- f. The Foundation and the Board of Visitors will strive to have open and meaningful communication which can be accomplished through holding a joint annual meeting, through participation of the Board of Visitors in Foundation orientation and through having the head of each board address the other's board.**

- g. From time to time, the parties may enter into one or more separate agreements pursuant to which the Foundation performs certain services for, and is compensated for such services by, the University**
- h. The University shall support the Foundation's ability to respect the privacy and confidentiality of donor records. In furtherance thereof, the University shall establish and enforce policies to protect donor confidentiality and rights consistent with Va. Code 2.2-3705.4(7)**
- i. The University will obtain any legally required approvals from the Board of the Foundation, the University's Board of Visitors and the Commonwealth in order to borrow funds from the Foundation.**

4. University Responsibilities Fund-Raising

- a. The University shall create an environment conducive to increasing levels of private support for the mission and priorities of the University.**
- b. The University 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.**
- c. The University in consultation with the Foundation, will establish, adhere to, and periodically assess its gift-management and acceptance policies.**

5. Foundation Responsibilities Fund-Raising

- a. Although fundraising is the responsibility of the University, the Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of the University of Mary Washington.**
- b. The Foundation, upon request by the University president, shall from time to time, assist in high-level donor cultivation and solicitation activities, through either staff or Board member involvement. The Foundation will make every effort to assist the University in these endeavors.**
- c. The Foundation will adhere to the gift-management and acceptance policies established by the University. The University will provide appropriate recognition of gifts as required by these policies.**
- d. The Foundation recognizes that the University bears full responsibility for fund-raising. Should opportunities arise, Foundation representatives will coordinate fund-raising initiatives, including major gift or land acquisition solicitations, with the University.**

- e. 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. Grants from private institutions will be the responsibility of the Foundation.

6. Asset Management

- a. 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).
- b. 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 agrees that it shall continue to invest and manage such University endowment funds which the University chooses, in its sole discretion, to place with the Foundation and in so doing the management and investment shall conform to applicable Virginia laws relating to the investments a fiduciary may make, and to the policies identified in subsection (a) above. The Foundation shall invest and manage the unrestricted and restricted funds which are received from sources other than the University in accordance with the current investment policies as adopted by the Foundation pursuant to subsection (a) above, copies of which shall be provided to the University.
- c. The Foundation will engage an independent accounting firm annually to conduct an audit of the Foundation's financial and operational records, and will provide the University of Mary Washington with a copy of the annual audited financial statements, including management letters.
- d. At the request of the University president, the following items shall supplement the annual financial report to the University:
 - i. Notice of any planned major capital expenditure.
 - ii. A copy of the Foundation's filed IRS Form 990.
 - iii. A list of any compensation or award paid to any University employee or member of the employee's immediate family, whether in the form of money or property or the use of money or property.
 - iv. A list of all private firms responsible for managing or investing the Foundation's assets and the endowment.
- e. The Foundation, through its independent public accountant, shall assist the University in meeting its responsibility for consolidating Foundation financial reports pursuant to the state's requirements for University financial reporting.

7. Institutional Flexibility

- a. The Foundation may explore opportunities, including acquisition and management of real estate, on behalf of the University for future development, allocation, transfer, or use.
- b. 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 other anticipated uses.
- c. The Foundation may also hold licensing agreements and other forms of intellectual property, borrow or guarantee debt issued by third parties, or engage in other activities to increase Foundation revenue with no direct connection to a University purpose. The Foundation shall bear full responsibility for ensuring that any such activities conform with the requirements of 501 (c) (3) organizations under the Internal Revenue Code
- d. When distributing gift funds to the University, the Foundation will disclose any terms, conditions, or limitations imposed by donor or legal determination on the gift. The University will abide by such restrictions and provide appropriate documentation.

8. Transfer of Funds

- a. The Foundation is the primary depository of private gifts and will transfer donated funds to the designated entity within the institution in compliance with applicable laws, university policies, and gift agreements.
- b. The Foundation's disbursements on behalf of the University must consist of reasonable business expenses that support the institution, are consistent with donor intent, and do not conflict with the law.
- c. The Foundation agrees to transfer restricted funds, both current funds and income from endowments, to the University in an expeditious manner when requested by the University in order for the University to make expenditures in accordance with the terms and conditions applicable to the particular funds.
- d. Consistent with the Foundation's annual budget, the Foundation may pay those expenses of the University as requested by the University's Board of Visitors or the University president.

9. Funding and Administration

- a. The University of Mary Washington Foundation is responsible for establishing a financial plan to underwrite the cost of Foundation staff, programs, operations, and services.

- b. The Foundation has the right to use a reasonable percentage of the annual unrestricted funds, to assess fees for services, or impose gift taxes, to support its operations, after consultation with the University.
- c. Subject to availability and requests for utilization by the Foundation, the University may provide the Foundation with office space, computer and telephone equipment, utilities, office supplies, and other such services that may be necessary or required to fulfill its responsibilities and obligations. The Foundation shall reimburse the University for all foregoing services and equipment that it receives. The Foundation has the right to use the University's computer server for development applications and electronic communications and the right to use the University's telephone system at no charge. The Foundation will be the sole owner of all Foundation records kept on the server.
- d. The parties agree that the Foundation is responsible for all management, supervision and oversight of the Foundation's employees. All employment contracts with Foundation employees will be administered and enforced solely by the Foundation in accordance with its policies. .
- e. 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.
- f. The Foundation will provide access to data and records to the University on a need-to-know basis in accordance with applicable laws, Foundation policies, and guidelines and consistent with preserving donor confidentiality. The Foundation will provide copies of its annual report and other information that may be publicly released.
- g. The University and the Foundation acknowledge the independent status of the Foundation and agree that the University and the Commonwealth of Virginia are not liable, and will not be held out by the Foundation as liable, for any of the Foundation's contracts, torts, or other acts or omissions, or those of the Foundation's directors, officers, employees, agents or activity participants. Likewise, the parties agree that the Foundation is not liable, and will not be held out by the University as liable, for any of the University's contracts, torts, or other acts or omissions, or those of the University's employees, agents, students or activity participants.
- h. To ensure effective achievement of the items of the Agreement, the University and Foundation officers and board representative shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.

10. This Agreement supersedes in its entirety the "Management Principles for Relationships with University-Related Foundations" (the "Management Principles"), adopted by the University on June 30, 1990.

11. Consistent with provisions appearing in the Foundation's articles of incorporation, 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, after satisfaction of its debts and liabilities, 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.

12. Either party may, upon 90 days prior written notice to the other, 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 remedy the default within sixty (60) days after receiving written notice of default. Should the University choose to terminate this Agreement other than for a material default by the Foundation, any provision of this Agreement to the contrary notwithstanding, the Foundation may require the University to pay, within 180 days of written notice, all debt incurred by the Foundation on the University's behalf including, but not limited to, lease payments, advanced funds, bonds and funds borrowed for specific University initiatives, which obligation is expressly conditioned upon the University's ability to make such payment under the laws of the Commonwealth and to the extent that funds are appropriated and available for such purpose.

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.

(SIGNATURES TO FOLLOW)


University of Mary Washington



Dr. Troy D. Paino, President

4/26/2017

Date signed

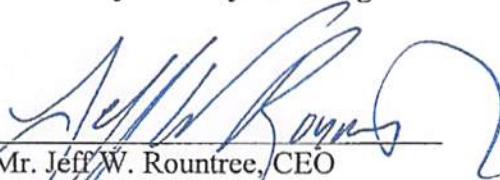


Mr. Fred M. Rankin, III, Rector

5/17/2017

Date signed

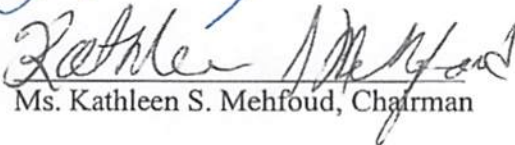
University of Mary Washington Foundation



Mr. Jeff W. Rountree, CEO

4/25/2017

Date signed



Ms. Kathleen S. Mehfoed, Chairman

5/17/2017

Date signed