

MEMORANDUM OF UNDERSTANDING
between
FLORIDA A&M UNIVERSITY
and
FLORIDA AGRICULTURAL AND MECHANICAL UNIVERSITY FOUNDATION,
INC.

This Memorandum of Understanding (hereinafter the “Agreement”) is made between The Florida A&M University Board of Trustees (hereinafter the University) and the Florida A&M University Foundation, Incorporated (hereinafter the Foundation).

RECITALS

- A. The Foundation is a Florida nonprofit corporation under the provisions of Chapter 617, Florida Statutes, qualified under Section 501(c)(3) of the Internal Revenue Code and exists for the purposes of stimulating voluntary private support from alumni, parents, corporations, foundations, and others for the benefit of Florida A&M University; and,
- B. The University has officially certified the Foundation as satisfying the standards and eligibility requirements as a direct support organization set forth in 1004.28, Florida Statutes; and,
- C. The Foundation exists as a corporate fiduciary to raise, manage and administer private resources to support the mission and priorities of the University, as established by the Board of Trustees and the President of the University; and,
- D. The Foundation is dedicated to assisting the University by fostering a culture of philanthropy, growing the endowment and in addressing, through financial support, the long-term academic and other priorities of the University and to provide opportunities for students and a margin of institutional excellence unavailable with state funds; and,
- E. The parties desire to formalize the relationship between the University and the Foundation by setting forth the manner in which the University is to provide support to the Foundation and in which the Foundation is to provide support for the University.

TERMS

In consideration of the mutual covenants, promises and conditions herein contained, and for good and valuable consideration the adequacy of which is hereby acknowledged, the University and the Foundation, agree that the foregoing recitals are true and correct and are incorporated

herein by this reference as though set forth fully. The University and the Foundation further agree as follows:

1.0 The Foundation Support of the University.

- 1.1 The Foundation's sole purpose is to provide support to the University, including its associated entities. In accordance with the Foundation's governing documents that support includes, but is not limited to:
 - 1.1.1 Raising, receiving, investing, acknowledging, accounting for and administering funds and real and intellectual property on behalf of the University to use for its charitable, scientific, research, and educational purposes;
 - 1.1.2 Assisting the University in its fundraising, marketing, public relations and alumni outreach activities and development programs with individuals, corporations, foundations, and other organizations;
 - 1.1.3 Soliciting cash, securities, real and intellectual property, and other private resources for student scholarships, faculty support, facilities, programs, endowments, and supporting other educational, research, cultural, scientific, public service, charitable activities and any lawful purposes of the University;
 - 1.1.4 Promoting the welfare and development of the University;
 - 1.1.5 Performing other acts as may be deemed appropriate in carrying out the purposes or mission of the University.

2.0 Use of the University Name.

- 2.1 The Foundation may, in connection with its lawful business and activities, use the name of Florida A&M University as well as the University's logos, acronyms, seal, and other symbols and marks of the University ("University Marks"), provided that, the Foundation clearly communicates that it is conducting business in its own name for the benefit of the University. All correspondence, advertisements, and other communications by the Foundation must clearly indicate that the communication is by the Foundation and not from the University. The Foundation may use University Marks only in connection with the services rendered for the benefit of the University and in accordance with the guidance and directions furnished to the Foundation by the University, or its representatives or agents, from time to time, and only if the nature and quality of the services in connection with which the University Marks are used shall be satisfactory to the

University. The University shall exercise control over and be the sole judge of whether or not the Foundation has met or is meeting the established standards of quality.

2.2 The Foundation shall not delegate the authority to use any University Marks to any person or entity and agrees that no transfer or ownership of University Mark is granted. Any preexisting use of University Marks by third parties previously authorized by the Foundation shall be subject to review and ratification by the University. The University reserves the right, in its sole discretion, to reject any copy or usage of the University Marks.

2.3 The Foundation agrees to cease using the University Marks if:

2.3.1 The Foundation dissolves;

2.3.2 This Agreement is terminated;

2.3.3 The Foundation ceases to be a nonprofit corporation or ceases to be recognized by the Internal Revenue Service as described in section 501(c)(3) of the Internal Revenue Code; or

2.3.4 The University revokes such authority for failure to conform with the requirements of section 2.1, above. Such revocation shall not occur until after the Foundation is provided written notice of its failure to conform and has had a reasonable opportunity to cure such non-conformance.

2.4 Notwithstanding the provisions of section 2.1, the Foundation agrees that it will not offer any course or seminar using the University's name.

3.0 Relationship between the Foundation and the University.

3.1 The University agrees to encourage and maintain the independence of the Foundation and, at the same time, foster the cooperative relationship between the University and the Foundation.

3.2 The Chairman of the Florida A&M University's Board of Trustees or a designee and the President of the University or a designee and the Vice President for Administrative and Financial Services/Chief Financial Officer of the University shall be voting members of the Foundation's Board of Directors.

3.3 The Board of Directors of the Foundation shall be responsible for control and management of all assets of the Foundation, including prudent management of all gifts to the Foundation consistent with the donor's intent.

- 3.4 The Executive Director of the Foundation shall be selected by the President of the University in accordance with Florida law and University policy. The Executive Director reports to the President of the University or a designee reporting directly to the President of the University. The Executive Director shall advise, inform, and serve as the key liaison to the Foundation Board of Directors, especially with respect to business and fiduciary matters. The Executive Director is responsible for implementing Foundation policies and actions taken by the Foundation Board of Directors.
- 3.5 The Foundation will maintain an audit committee which does not have any employees of the University or the Foundation as a member. This committee will receive and review the annual audit of the Foundation and relevant annual tax forms to be submitted by the Foundation in accordance with section 6.1.

4.0 The Foundation's Obligation to the University.

- 4.1 The Foundation agrees to solicit and accept gifts in accordance with established University policy.
- 4.2 The Foundation agrees to advise prospective donors of restricted gifts that acceptance of such gifts is conditioned upon the University's approval under section 4.1, if required.
- 4.3 The Foundation agrees to coordinate with the University Office of Institutional Advancement or other appropriate University Office(s) regarding funding goals, programs, and campaigns.
- 4.4 The University and the Foundation agree to annually review existing guidelines regarding fund labeling and identification, so that the intended beneficiary, whether the University or the Foundation, receives the appropriate funds.
- 4.5 The Foundation shall obtain, operate, and maintain its accounting, development activities, alumni records, and other information on University-compatible data processing equipment, peripheral hardware and software and shall make its data reasonably available to the University in accordance with existing University guidelines and regulations and as otherwise required by applicable law. Notwithstanding the foregoing, the Foundation shall maintain ownership of and control access to any prospect and donor information it collects in accordance with applicable law. The Foundation agrees that it will establish and maintain a policy governing the retention and destruction of documents including electronic files and which prohibits destruction of documents if an investigation into wrongdoing or litigation is anticipated or underway.

- 4.6 The Foundation shall administer its funds and make distributions to the University and its associated entities in accordance with policies and procedures established by the Foundation from time to time, with advice and counsel from the University. The Foundation agrees that all transfers of funds from the Foundation must be documented in writing or electronically in a form that has a retrievable transaction trail.
- 4.7 The Foundation will provide services to the University as may be agreed to in writing before the services are provided. The University will reimburse the Foundation for these services in an amount that is agreed to in writing before the services are provided.
- 4.8 The Foundation shall promptly notify the University if the Foundation: (a) materially breaches any provision in this Agreement; (b) fails to properly receive, apply, manage or disburse funds; (c) engages in conduct prohibited or subject to sanction under state or federal law; (d) its officers fail to comply with the conflicts of interest policies; or (e) is being investigated by any state or federal regulatory body and such investigation may have a significant impact on the Foundation or its status as a tax exempt entity.
- 4.9 The Foundation agrees to operate using sound fiscal and business principles, to ensure that sound internal control structures are in place, and to follow generally accepted accounting procedures.
- 4.10 The Foundation shall create an annual operations and capital budget.
- 4.11 The Foundation agrees not to make any payments to a University employee, except for approved expense reimbursements without prior written approval from the President of the University and in accordance with Internal Management Memorandum No. 2003-01 – Direct Support Organizations. Payments to the President, except for approved expense reimbursements, must be approved by the FAMU Board of Trustees. All salary and non-salary compensation of employees of the Foundation shall be approved in advance by the Board of Directors of the Foundation.
- 4.12 The Foundation officers and employees who have check signing authority or who handle cash or negotiable instruments must be bonded in an amount determined to be reasonable by the Foundation Board of Directors and the University.
- 4.13 Without waiving any defenses or immunities, the Foundation assumes liability for the negligent or wrongful acts or omissions of its employees, officers and agents while acting within the scope of their employment.

- 4.14 The Board of Directors of the Foundation shall obtain general liability and directors/officers insurance in an amount determined to be reasonable by the Foundation board, including bonding of its officers and other appropriate persons.
- 4.15 The Foundation must not engage in substantial lobbying activities and may not engage in any political activities.
- 4.16 The Foundation may not incur unsecured debt in excess of \$500,000.

5.0 The University Support of and Obligations to the Foundation.

- 5.1 The University will provide services to the Foundation as may be agreed to in writing before the services are provided. The Foundation will reimburse the University for these services in an amount that is agreed to in writing before the services are provided.
- 5.2 The University may provide reasonable support to the Foundation including personnel services consistent with the support outlined above and based upon an annual budget plan agreed to by the parties, as measured by staff hours, space, equipment and supplies.
- 5.3 When the University receives funds from the Foundation for a specified purpose, the University shall use such funds received for the specific purpose.
- 5.4 The Foundation agrees that when the University personnel provide services for the Foundation and there arises a conflict between the University and the Foundation, the University employee must comply with the policies, regulations, and directives of the University; provided that said employee shall notify the Foundation in ample time to remedy the conflict or approve the intended action when feasible. If prior notification is not feasible, the Foundation shall be promptly notified in writing by the appropriate University Administrator of the conflict and action taken.
- 5.5 To the extent permitted by Section 768.28, Florida Statutes, without waiving any defenses or immunities, including without limitation, sovereign immunity, the University assumes liability for the negligent or wrongful acts or omissions of its employees, officers and agents, including those assigned to the Foundation, while acting within the scope of their employment.

6.0 The Foundation Audits and Reporting.

- 6.1 The Foundation agrees to select a certified public accounting firm, to serve as the

Foundation's independent auditor and to complete a full and complete annual audit of its finances and operations. The Foundation agrees to notify the University in writing within thirty (30) days if it selects a different auditor.

- 6.2 The Foundation agrees to provide to the University, annually on or before January 1 of the following year:
 - 6.2.1 The annual audit report, management letters and responses to management letters, and the publicly disclosed portion of the Foundation's IRS Form 990;
 - 6.2.2 The list of the members of the Foundation governing board, officers, and employees;
 - 6.2.3 The names of the officers and governing board members of all the Foundation associated or affiliated entities.
 - 6.2.4 An annual report of operations that shows actual versus budgeted revenues and expenditures.
- 6.3 The Foundation agrees to allow the University to inspect and audit all foundation books and records at reasonable times, and to provide timely such other reports of and information on its financial status and operations as required by the Chancellor of the State University System of Florida.

7.0 Conflicts of Interest.

The Foundation will establish and maintain conflicts of interest policies pertaining to its relationship with the University, members of the governing board and persons doing business with the Foundation. Such policies shall provide that (a) all transactions (other than expense reimbursements set forth in 5.3), between the Foundation and an officer, director, or employee of the Foundation, must be approved by the Foundation Board; (b) no Foundation officer, director, or employee having a private business interest in the Foundation's business transaction may be involved in the decision with respect to whether the Foundation should enter into such transaction; (c) no Foundation scholarship or fellowship award may be made to an officer, director, or employee of the Foundation or to a family member of such person.

8.0 Compliance with Board of Governors and University Policies and Regulations and the Foundation Bylaws.

The University and the Foundation agree to comply with the policies and regulations of

the Board of Governors pertaining to the relationship between the University and associated entities, including amendments thereto. The University shall provide the Foundation with proposed amendments to such policies and regulations not less than fifteen days prior to their effective date. The Foundation agrees to provide the University with a copy of its Bylaws and shall provide any proposed amendments not less than fifteen days prior to the meeting of the Foundation at which they are considered for adoption.

9.0 Effect of Agreement; Modification.

This Agreement (and its attachments, if any) contains all the terms between the parties and may be amended only in writing signed by an authorized representative of both parties.

10.0 Confidentiality.

Neither the Foundation nor the University shall disclose or use any private, confidential, proprietary, or trade secret information provided from one to the other except as required in and by the terms of this Agreement or as required by law. The Foundation recognizes its and the University's obligation to comply with Florida Public Records laws.

11.0 Term and Termination.

The initial term of this Agreement shall be two years and shall be automatically renewed for successive one year terms, unless and until either party gives notice in writing to the other party of its intent not to renew the Agreement at least 30 days prior to the beginning of a new term. Either party shall have the continuing right to terminate this Agreement at any time without cause upon 90 days written notice to the other party. The University may terminate this Agreement at any time if the Foundation fails to abide by the policies or regulations of the University, the Board of Governors or Florida law which govern the relationship between the University and the Foundation.

12.0 Dissolution.

In the event of dissolution of the Foundation, either voluntary or involuntary, all assets and property which remain after the discharge of the Foundation's liabilities and unless otherwise designated by the donor of an asset shall be paid over or distributed by the University or to any other nonprofit corporation or corporations organized to support the University or any of its Colleges, Schools, Departments, or affiliated organizations as determined by the University in its sole discretion, and shall be used or distributed for no

other object or purpose whatsoever; provided, however, that any such organization must be exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code, as amended and be an associated entity approved by the University pursuant to regulations of the University of Florida .

13.0 Compliance with Applicable Law and Non-Discrimination.

13.1 The Foundation agrees to comply with all executive orders, federal, state and local rules, regulations, and laws, and University regulations and policies applicable to the Foundation as currently in effect and as may be amended from time to time, including applicable provisions of Florida's public records and public meeting laws. The Foundation further agrees not to discriminate in any manner on the basis of sex, sexual orientation, gender identity, gender expression, veteran status, race, creed, age, color, national origin, religious belief or disability, as provided by law and to comply with all non-discriminatory laws and policies that the University promulgates and to which the Foundation is subject.

13.2 The Foundation will maintain a confidential and anonymous mechanism to encourage employees to report any inappropriateness within the entity's financial management and will not punish or retaliate against any employee for recording problems.

14.0 Notice.

Any notice to either party hereunder must be in writing signed by the party giving it, and shall be deemed given when mailed postage prepaid by U.S. Postal Services first class, certified, or express mail, or other overnight mail service, or hand delivered, when addressed as follows:

To the University:
Florida A&M University
Office of the President
Lee Hall, Suite 400
Tallahassee, FL 32307

Attn: University President

To the Foundation:
Florida A&M University Foundation, Inc.
Executive Director

Attn: Chair of Board of Directors

Or to such other addressee as may be hereafter designated by written notice. All such notices shall be effective only when received by the addressee.

15.0 General Provisions.

- 15.1 This Agreement shall not be assigned or otherwise transferred by the Foundation without the prior written consent of the University.
- 15.2 The delay or failure of either Party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of any subsequent breach either of the same provision or otherwise.
- 15.3 The terms of this Agreement are severable such that if any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.
- 15.4 This Agreement shall be construed, governed, and interpreted in accordance with Florida law.

IN WITNESS WHEREOF, the authorized representative(s) of the University and the authorized representative(s) of the Foundation have executed this Agreement on this _____ day of _____ 2014.

Chair
Florida A&M University Board of Trustees

University Attorney

Date: _____

President
Florida A&M University Board of Trustees

Date: _____

Approved as to form.

Chair
Florida A&M University Foundation, Inc.
Board of Directors

Date: _____

Executive Director
Florida A&M University Foundation, Inc.

Date: _____