



Clark College

## Board of Trustees Special Meeting

Thursday, January 20, 2021 at 3:30pm

Via Zoom

Zoom Link: [Here](#)

Meeting ID: 844 0704 0737

Password: 304848

Call In (253) 215-8782

**Board of Trustees Special Meeting Agenda**  
**Thursday, January 20, 2022 at 3:30pm via Zoom**

- I. Call to Order/Agenda Review - Chair Bennett**
- II. Foundation Operating Agreement**
  - a. Review Proposed Foundation Operating Agreement and related documents (Schedule 1, Data Sharing Agreement, and Gift Acceptance Policy).**
  - b. Possible Board Action: Approval of Proposed Foundation Operating Agreement and/or related documents (Schedule 1, Data Sharing Agreement, and Gift Acceptance Policy).**
- III. Executive Session (if necessary)– Chair Bennett (An Executive Session may be held for any allowable topic under the Open Public Meetings Act)**
- IV. Adjournment - Chair Bennett**

## Schedule A

Draft

### Summary of College Support provided to the Foundation 2021-2022

	2021/22
Business Services	
Monthly Billing	1,961
AP/Purchasing	10,649
IT Support	
Desktop Support (~146 hours)	16,360
Network Support (~150 hours)	18,750
Developers (~20 hours)	4,500
Server Admin (~128 hours)	17,000
Security(~40 hours)	5,000
Software	525
Procurement-(~30 hours)	6,750
Media-(~260 hours)	65,000
Internet/phone	
Communications and Marketing (~140 hours)	9,800
Grounds	5,161
Maintenance	1,300
Total	162,756

**DATA SHARING AGREEMENT BETWEEN  
CLARK COLLEGE  
AND  
THE CLARK COLLEGE FOUNDATION**

The purpose of this Data Sharing Agreement (this “Agreement”) is to set forth the agreed terms for sharing data, and to authorize the release of specified personally identifiable student and employee information by Clark College (the “College”), a Washington institution of higher education, to the Clark College Foundation (the “Foundation”), an independent nonprofit corporation that provides services to the College and to College students, each of the College and the Foundation are referred to as a “Party” and collectively referred to as the “Parties.”

**I. RECITALS**

WHEREAS, the Parties recognize the importance of protecting against unauthorized access to and/or disclosure of confidential information, including information protected by state public disclosure laws codified at chapter 42.56 RCW, and student education records protected by the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g and in 34 C.F.R. § 99, and other applicable laws governing data access and disclosure;

WHEREAS, the Parties desire to preserve the anonymity of student identities, including assurance that identifiable student data is not improperly released to third parties;

WHEREAS, the Parties are working to enhance the ability of the College and Foundation to improve academic achievement for College students, including providing financial aid and other forms of assistance to students, by allowing access to individual student records consistent with the requirements of FERPA; and

WHEREAS, the Parties desire to establishing the terms and conditions for the sharing of confidential information.

NOW, THEREFORE, in consideration of the mutual commitments herein, and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties hereby agree as follows:

**II. SCOPE & PURPOSE**

The purpose of this Data Sharing Agreement is to establish the procedures, methods, and protections for sharing data between the College and Foundation. The Foundation, as an independent and separate entity, receives, holds, invests, raises, and administers funds and property and makes expenditures for the benefit of the College, thereby promoting, supporting, developing and extending the educational undertakings of the College. Such undertakings may require the sharing of necessary data that is used by the Parties for fundraising, processing, evaluation, and distribution of student scholarships, emergency grants, and other forms of

student financial aid, in addition to the Parties performing other duties and services as outlined under separate written agreements.

### **III. CONSENT**

The Parties recognize that prior written consent is a permissible means for the College to share student education records and student personally identifiable information (PII) under 34 C.F.R. 99.30. The College shall not release student education records to the Foundation without prior consent of the student (if the student is at least age 18) or parent/guardian (if the student is younger than age 18) except in cases that constitute exceptions to the consent requirements of FERPA. Such FERPA exceptions to consent include, but are not limited to, disclosure in connection with financial aid for which a student has applied or which a student has received under 34 C.F.R. 99.31(a)(4), or, when the Foundation qualifies as an “other school official” under 34 C.F.R. 99.31(a)(1). Disclosure under any of these exceptions is subject to the use and maintenance requirements under FERPA.

Whenever a FERPA exception does not apply and consent is required under FERPA for sharing student education records, consent forms shall be collected and retained by the Foundation, and made available to the College. The written consent form must specify the records that may be disclosed, state the purpose of the disclosure, and state to whom the disclosures will be made, which all must be done consistent with applicable state and federal laws and regulations that apply to student records and privacy.

### **IV. CONFIDENTIAL INFORMATION**

The term “confidential information” as used in this Agreement means any and all information provided by the College to the Foundation, which is protected from public disclosure by state public disclosure laws codified at chapter 42.56 RCW.

The term “confidential information” includes, but is not limited to:

Any personally identifiable student-related information, including, but not limited to (a) student names, (b) the name of a student’s parent or other family members, (c) student addresses, (d) the address of a student’s family, (e) personal identifiers such as a student’s social security number or student number, (f) personal characteristics that would make a student’s identity easily traceable, (g) any combination of information that would make a student’s identity easily traceable, and (h) any other personally identifiable student related information, or portrayal of student related information in a personally identifiable manner. (See, in particular RCW 42.56.070 and 42.56.080 which recognize exemptions from mandatory public disclosure information contained in other statutes such as the federal Family Educational Rights Privacy Act (FERPA) at 20 U.S.C. section 1332g and its implementing regulations at 34 C.F.R. Part 99 which prohibit the unauthorized public disclosure and re-disclosure of “personally identifiable student information” in or from student “education records”; the state ethics law at RCW

42.52.050(2) which prohibits state officers and employees from disclosing confidential information as defined above. Confidential information may also include proprietary data, trade secrets, or other such information protected under RCW 42.56.270 and/or chapter 19.108 RCW.

## V. DATA SHARING

Data will not be transmitted until proof of consent is submitted or both Parties agree an exception to obtaining consent exists for the specific data points to be provided.

### A. Limitations on Access

1. Authorized Access. Only individuals authorized by the Foundation to perform duties on behalf of the Foundation will have access to confidential information described in this Agreement and only for the purposes specified. Authorized individuals and contractors shall be required to execute a statement of confidentiality and non-disclosure agreement, attached as **Appendix A** to this agreement.
2. Destruction and Duplication. Confidential information provided to the Foundation will be destroyed when the work for which the information was required has been completed unless regulations or laws require further retention of the records, and the confidential information will not be duplicated or re-disclosed without specific legal authority to do so. The Foundation and/or its contractors shall complete the Certificate of Data Destruction, **Appendix B**, when complying with this provision, which shall survive the term of this Agreement.
3. Adherence to Law. The Foundation will not use confidential information for any purpose not specifically authorized under federal law, state law, and the scope and purpose in this Agreement.
4. Safeguards. The Foundation will protect the confidentiality of information provided by the College pursuant to this Agreement by adhering to its policies governing physical, electronic, and managerial safeguards against unauthorized access to and unauthorized disclosure of confidential information. Security standards shall meet or exceed Washington State Office of the Chief Information Officer (OCIO) Standard No. 141.10. Confidential information shall only be transferred using a secure file transfer protocol that is OCIO policy compliant.
5. If the Foundation receives a public records request, court order, or subpoena for confidential information shared under this Agreement, the Foundation shall, to the extent permitted by law, notify the College within two (2) business days of its receipt thereof, and will reasonably cooperate with the College in meeting the Parties' legal obligations including, but not limited to those under FERPA, in complying with or responding to said public records request, subpoena, and/or

court order.

## VI. DATA SECURITY AND PROTECTION OF PRIVACY

To effect the transfer of confidential information that is subject to federal and state confidentiality laws and to ensure that the required confidentiality of confidential information shall always be maintained, the Foundation agrees to the following in compliance with state law and FERPA and its regulations, as set forth in 34 C.F.R. § 99.

1. The Foundation will provide the College with a list of the names, birthdates, and student ID numbers (if known) of the students for whom written consent for the release of confidential information has been granted to the Foundation. This list will include any restrictions on or exceptions to the written consent. The written consent will comply with FERPA, specifically the requirements of 34 C.F.R. § 99.30, and shall authorize the College to release student confidential information to the Foundation. The Foundation shall maintain the written consents on file, and shall provide copies of those documents to the College upon request.
2. For purposes of this Agreement and ensuring the Foundation's compliance with the terms of this Agreement and all applicable state and federal laws and regulations, the Foundation designates its Chief Executive Officer ("CEO") as the temporary custodian of the data that the College shares with the Foundation, and the Foundation CEO may delegate this responsibility to a specific person within the Foundation, and inform the College of the name of the designee. If the Foundation CEO or their designee changes, the Foundation will provide the College with written notice of this change before it occurs. The College will release all data and information under this Agreement to the named delegee. The Foundation's temporary custodian shall be responsible for transmitting all data requests and maintaining a log or other record of all data requested and received pursuant to the Agreement, including confirmation of the return or destruction of data as described below. The College or its agents may, upon request, review the records the Foundation is required to keep under this Agreement. The College designates **[INSERT TITLE OF COLLEGE'S DESIGNEE]** as its liaison for all communications with the Foundation regarding this Agreement. If the individual or title of the College's designated liaison changes, the College will provide the Foundation with written notice of this change before it occurs.
3. If the Foundation maintains the confidential information in an electronic database, platform, and/or on cloud based servers, the confidential information shall be maintained in a secure data center that is within the continental United States. The Foundation, and any third-party data center management vendors that the Foundation is authorized to contract with, shall be ISO 27001/27002 compliant, certified and audited no less than annually by a qualified third party. The data center/platform will be operated under industry best standards and practices including physical, digital, and logical security of equipment and data. Before entering into a contract with a third-party data center management vendor or SaaS provider to house the confidential

information under this Agreement, that contract may not be executed until it has been reviewed by the College's designee and IT expert(s).

4. The Foundation may engage employees, volunteers, and/or contract with individuals or organizations to assist the Foundation in carrying out the scope of work identified in this Agreement, including contracting with third parties to conduct Foundation activities on the Foundation's behalf. The Foundation may disclose confidential information to such persons with legitimate Foundation interests in the information for purposes described in this Agreement. The Foundation will require all employees, volunteers, and contractors to comply with this Agreement and all applicable provisions of FERPA and other laws and regulations with respect to the data and information shared under this Agreement.
5. The Foundation will fulfill its obligations under this Agreement in a manner that does not disclose confidential information and will ensure that authorized employees, representatives, and contractors of the Foundation understand and adhere to their obligations to safeguard the information consistent with applicable state and federal laws or regulations including, but not limited to, FERPA.
6. The Foundation will destroy or return all data files and hard copy records to the College that contain confidential information and purge any copies of such data from its computer systems:
  - a. Upon termination of this Agreement, either by expiration of the Term of Agreement or as provided herein;
  - b. When the confidential information is no longer needed for the purposes for which this Agreement was signed, whichever first occurs; or
  - c. If this Agreement is otherwise terminated by either Party.

Upon return or destruction of any such confidential information, the Foundation will submit written notice to the College certifying that it has fulfilled these requirements. The Foundation will also require any of its agents and contractors that have been provided any confidential information as a result of this Agreement to meet the requirements of this provision. This provision will survive the term of the Agreement.

7. The Foundation is not authorized to continue using the data obtained under this Agreement upon termination of the Agreement.
8. The Foundation understands that the Agreement does not convey ownership of the College's data to the Foundation.



9. The Foundation will protect all data obtained pursuant to this Agreement from any unauthorized use, disclosure, copying, dissemination, publication, or distribution. Without limitation of the foregoing, the Foundation will: (a) make the confidential information available only to those of its employees, agents and other representatives who have a need to know the same for the purpose(s) specified in this Agreement, who have been informed that the confidential information belongs to the College and are subject to this Agreement, and who have agreed or are otherwise obligated to comply with this Agreement; (b) not disclose the confidential information to any third party unless done so in compliance with this Agreement; (c) make or copy the confidential information only as reasonably required for the purpose specified in this Agreement; (d) not deliver, distribute, display, demonstrate, or otherwise make available the confidential information to any third party except as provided in clause (a) above; (e) not reverse engineer, decompile, or disassemble any computer program included with such confidential information except to the extent permitted by law; and (f) not remove or obliterate markings (if any) on confidential information indicating its proprietary or confidential nature. In any event, the Foundation will be responsible for any breach of this Agreement by anyone receiving confidential information from or through the Foundation. The Foundation will, at its sole expense, take all reasonable measures (including, but not limited to, court proceedings) to restrain prohibited or unauthorized disclosure or use of the confidential information by anyone receiving the confidential information from or through the Foundation.

## **VII. CONTACT INFORMATION AND NOTIFICATIONS**

Any notifications or other correspondence required by this Agreement will be sent to the following addresses:

COLLEGE:

[name, title]

[mailing address]

[email address]

FOUNDATION:

[name, title]

[mailing address]

[email address]

Notifications will be sent both via email and U.S. mail. Each Party will notify the other Party of any changes in the above contact information before any such changes are implemented.

## **VIII. TERM OF AGREEMENT**

The term of this Agreement is four (4) years, commencing on the date of execution. This Agreement may be extended by mutual agreement of the Parties in writing for a period of no more than two years. The Foundation's obligations with respect to confidential information will survive any termination of the Agreement, including but not limited to the requirements of Sections VI, XI, XII, and XVII.

## **IX. TERMINATION**

Either Party may give thirty (30) days written notification of termination of this Agreement to the other Party at any time and for any reason.

## **X. ASSURANCES**

The Parties agree that all activity pursuant to this Agreement shall be in accordance with this Agreement and all applicable current or future federal, state, and local laws, and all applicable rules and regulations.

## **XI. INDEMNIFICATION**

The Foundation agrees that to the fullest extent permitted by law, the Foundation will hold harmless, defend, and indemnify the College, its agents, employees, and board members from any and all liabilities, penalties, losses, damages, claims, expenses, attorneys' fees, taxes, expenses of litigation, judgments, suits, liens, and encumbrances, without limitation, arising out of or resulting from any and all acts or omissions by the Foundation, or its agents, contractors, officers, or employees, under this Agreement. The College shall have the right to demand that the Foundation defend any and all claims, lawsuits, or proceedings related to services provided under this Agreement, without cost to the College, with a lawyer acceptable to the College. The terms of this section shall survive termination of the Agreement.

## **XII. INSURANCE**

The Foundation agrees to purchase and maintain throughout the term of this Agreement a technology/professional liability insurance policy, including coverage for network security/data protection liability insurance (also called "cyber liability") with a minimum limit of \$2,000,000 in the aggregate, covering liabilities for financial loss resulting or arising from acts, errors, or omissions, involving shared data, confidential data, data breaches, or in connection with the specific services described in this Agreement. The College shall be named as an additional insured on this policy

## **XIII. CONSTRUCTION**

This Agreement shall be governed, construed, and enforced according to the laws of the State of Washington without regard to any otherwise governing principles of conflicts of laws.

## **XIV. VENUE**

The Foundation irrevocably consents to the jurisdiction and venue of any state or federal court located in Clark County, Washington, with regard to any legal action or proceeding relating to this Agreement.

## XV. AMENDMENT

This Agreement shall not be modified or amended except by a written agreement executed by both of the Parties.

## XVI. NONDISCRIMINATION

No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any program provided by this Agreement because of race, color, creed, marital status, religion, sex, sexual orientation (including gender identify), national origin, honorably discharged veteran or military status, age, genetic history, the presence of any sensory, mental or physical disability, or political affiliation or belief, provided that the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents the individual from performing the essential functions of her or her employment position, even with reasonable accommodation. The Parties agree to abide by the standards of responsibility toward the disabled as specified by the Americans with Disabilities Act and applicable state law. In the event that one of the Parties hereto refuses to comply with the above provision, this Agreement may be canceled, terminated, or suspended in whole or in part by the other Party.

## XVII. OBLIGATIONS UPON BREACH OF SECURITY

Signing this Agreement indicates that the Foundation understands the confidentiality requirements for confidential information and any other data that may be submitted to the Foundation by the College, including but not limited to information protected by the FERPA. The following obligations apply to any data breach involving confidential information:

1. **The Foundation, its employees, volunteers, and/or contractors shall immediately, and in no event no later than 24 hours of discovery, report to the College any use or disclosure of the College's confidential information not authorized by this Agreement or in writing by the College.**
2. The Foundation shall conduct a timely and thorough investigation in an attempt to identify: (i) the nature of the unauthorized use or disclosure, (ii) the data used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) whether the information has been or can be secured; and (v) information relevant to the determination of whether the unauthorized access or disclosure is reasonably likely to subject individuals whose data was disclosed or accessed to harm. The Foundation shall also take corrective action as soon as practicable to eliminate the cause of the unauthorized access, use or disclosure, and to secure confidential information against further disclosure.
3. Discretionary Notice. At the College's discretion, the College may provide such notice as it deems appropriate to students whose personal information may have been

improperly accessed or disclosed and the Foundation shall be responsible for all associated costs incurred by the College in providing such notice.

4. Legally Required Notice.

a. The Foundation shall comply with its obligations under RCW 19.255.010, and any other applicable laws concerning data breach and/or unauthorized use or disclosure of the confidential information under this Agreement.

b. The Foundation shall be responsible for all costs associated with the College's compliance with its obligations under RCW 42.56.590 and other applicable laws concerning data breach and/or unauthorized use or disclosure of the Confidential Information under this Agreement, including, but not limited to, legal costs, independent forensic evaluation and investigative costs, call centers, and credit monitoring.

5. The Parties agree that they will work together to coordinate their satisfaction of the legal obligations referenced in this section to the extent possible and that, if there is disagreement about how these obligations should be satisfied and the extent to which these legal obligations apply, the Foundation shall be obligated to pay for the costs associated with the approach that involves the greatest notice and protections to affected individuals.

6. The College may discontinue providing confidential information to the Foundation until the College at its sole discretion has determined and received full assurance that the cause of the breach of security has been eliminated. The College reserves the right to terminate this Agreement at any time for breach of confidentiality.

**XVIII. WAIVER**

Any waiver by any Party hereto with regard to any of its rights hereunder shall be in writing and shall not constitute a waiver to any future rights which such Party might have hereunder.

//

//

//

//

//

//

**XIX. SEVERABILITY**

If any provision of this Agreement or any provision of any document by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

<p>CLARK COLLEGE FOUNDATION</p> <p>By _____ _____ _____, Chair Clark College Foundation Board of Directors</p>	<p>CLARK COLLEGE</p> <p>By _____ _____ _____, Chair Clark College Board of Trustees</p>
--	---

APPENDIX A  
STATEMENT OF CONFIDENTIALITY AND NON-DISCLOSURE

Before you are allowed access to the information in the data, you are required to sign the following statement:

As an employee, volunteer, and/or contractor of the Clark College Foundation, I have access to information provided by the College. This information is confidential, and I understand that I am responsible for maintaining this confidentiality. I understand that the information may be used solely for the purposes of work under DSA No. \_\_\_\_\_.

Please initial:

- \_\_\_\_\_ I have been informed and understand that all information related to this DSA is confidential and may not be disclosed to unauthorized persons. I agree not to divulge, transfer, sell, or otherwise make known to unauthorized persons any information made available to me under this agreement.
  
- \_\_\_\_\_ I understand that I am not to link data provided by the College or Foundation with other data or data sets as a way to determine the identity of an individual or individuals.
  
- \_\_\_\_\_ I also understand that I am not to access or use this information for my own personal information but only to the extent necessary and for the purpose of performing my assigned duties as an employee, volunteer, and/or contractor of Foundation under this Agreement. I understand that a breach of this confidentiality will be grounds for disciplinary action, which may also include termination of my employment, cancellation of my contract, and/or other legal action.
  
- \_\_\_\_\_ I agree to abide by all federal and state laws and regulations regarding confidentiality and disclosure of the information related to this DSA.

Employee

I have read and understand the above Statement of Confidentiality and Non-disclosure of information.

Supervisor

The employee has been informed of their obligations including any limitations, use or publishing of confidential data.

Signature \_\_\_\_\_

\_\_\_\_\_

Printed Name \_\_\_\_\_

\_\_\_\_\_

Organization \_\_\_\_\_

\_\_\_\_\_

Job Title \_\_\_\_\_

\_\_\_\_\_

E-mail address \_\_\_\_\_

Date \_\_\_\_\_

Please return signed forms to DSA Manager, [insert address]

APPENDIX B  
CERTIFICATE OF DATA DESTRUCTION

The following are acceptable destruction methods for various types of media, as advised by the Washington State Office of Privacy and Data Protection. At least one method defined under the various types of media must be used to destroy any data that you deem confidential or sensitive for that media type.

1. Optical discs
  - Incinerate the disc(s); or
  - Shred the discs
2. Magnetic tape(s)
  - Degauss;
  - Incinerate; or
  - Crosscut shredding
3. Server, workstation, or laptop hard drives or similar media
  - For mechanical hard drives, use a “wipe” utility which will overwrite the data at least three (3) times using either random or single character data;
  - For solid state hard drives, use a “secure erase” utility that resets all cells to zero;
  - Degauss sufficiently to ensure that the data cannot be reconstructed; or
  - Physically destroy disk(s)
4. Portable media
  - For mechanical hard drives, use a “wipe” utility which will overwrite the data at least three (3) times using either random or single character data;
  - For solid state hard drives and devices, use a “secure erase” utility that resets all cells to zero;
  - Degauss sufficiently to ensure that the data cannot be reconstructed;
  - Physically destroy disk(s) or devices; or
  - For smart phones and similar small portable devices use one of the following;
    - If the devices are encrypted and secured with a complex password, the data is considered destroyed. Before disposal or reissue of the device, make sure the data is encrypted and then reset the device to original or new condition; or
    - If a Mobile Device Management (MDM) solution for the device exists, enable the remote wipe command to destroy the data.
5. Cloud storage
  - Use the cloud provider’s procedures to permanently delete the files and folders.



- 6. Paper documents
  - Shred documents with a crosscut shredder.
- 7. Downloaded files
  - Overwrite the file with random data.

The undersigned hereby certifies that all electronic and paper copies of the following data provided to the Foundation by the College during the period of time covered by this agreement under DSA No. \_\_\_\_\_ have been destroyed.

Description of paper copies and/or electronic files destroyed (file names provided by COLLEGE):

---

---

---

---

---

Method of Destruction: \_\_\_\_\_

Date of Destruction: \_\_\_\_\_

Name of Submitter: \_\_\_\_\_  
(print)

Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Please return signed forms to DSA Manager, [insert address]

# Clark IT Foundation Services

IT SERVICE	SUPPORTING ELEMENTS	PROVIDER	HOURS ESTIMATED (WK, MTH OR YEARLY)	ANNUAL COST ESTIMATE	NOTES
Desktop Support	New System Set-ups	Brian Riechman	16hrs (Yearly)	1,700	on site technical support current
	Software Installations	Brian Riechman	110 hrs (Yearly)	12,000	Image computing environment, add remove applications related to desktop computers including onboard/off board comuting access
	Consulting	Brian Riechman	20 Hrs (Yearly)	2500	Calls tickets and research for solutions and tech support - below
	Help Desk Support	Brian Riechman	Combined	0	Printer installations, computer outages etc
	Printer Installations	Brian Riechman	Combined	0	POA printer/copier contract
	Hardware Upgrades & Repairs	Brian Riechman	Combined	0	
Server Administration	Active Directory	Foster Nostrand	36 hrs Yearly	4500	
	Group Policies	Torry Schreiner	6 hrs yearly	750	
	Consulting	Infrastructure team	20 Hrs yearly	3500	Utilizes Clark College's phone systems.
	Shared Drives	Torry Schreiner	Combined	0	Phone-a-thon lines provided by Lumen, maintained by Clark staff.
Network Services	Telecom project work	June Knight	110 hrs (20/21 Yearly)	13750	Physical cabling work conducted by Clark College staff
	Data Network, Wireless Network, phones,	Network Services	40 hrs Yearly	5000	services provided by clark college devices and data contract
Security	Firewall	Network Team	20 Hrs Yearly	2000	103k annual per yr paid for Palo's w/licensing for campus we need to add costs of contract plus % of time worked @2% = 2,065.00 annual
	Remediation	Security Team & Brian Riechman	20 Hrs Yearly	2500	lowered for 2021/22 due to covid remote services
Software	Adobe Creative Cloud & Acrobat DC Licensing	Brian Riechman & IT Purchasing	Purchasing- .5 Yearly	125	NOTE: Utilizes Clark College's Higher Ed Cooperative Contracts
	Microsoft Operating System	Brian Riechman & IT Purchasing		0	Owns Office 365 licensing
	Malwarebytes	Brian Riechman, IT Security & IT Purchasing	Purchasing- .25 Yearly	100	

Reviewed By: Anthony Evans, President

Reviewed By: Administrative Council on April 29, 2002

Approved By: Albert K. Karnig, President on April 29, 2002

Reviewed By: Administrative Council on May 13, 2002

Approved By: Albert K. Karnig, President on May 15, 2002

Reviewed By: Administrative Council on January 25, 2016

Approved By: President Tomas D. Morales on January 25, 2016

Reviewed By: Under Review

Approved By: Administrative Council

FOR INTERPRETATION OF THIS POLICY, PLEASE CONTACT: Office of Associate Vice President for University Advancement, 909/537-5004

## Overview

The Division of University Advancement at California State University, San Bernardino (CSUSB), enhances the awareness of and support for the University among its diverse constituencies. Under the leadership of the Vice President for University Advancement, the University Advancement staff is committed to helping the University achieve its goals so that academic quality and service to the region can be maintained and advanced.

## The CSUSB Fundraising Program

The Office of Philanthropic Giving within University Advancement at CSUSB strives to maintain a professional, donor-centric fundraising program that seeks philanthropic gifts to enhance the quality of CSUSB's programs as well as the student's educational experience. The program follows a traditional model in which fundraising activities evolve from needs and priorities established by the University's senior leadership.

## Fundraising Guidelines

Divisions and/ or departments who wish to solicit funds or property in the name of or for the benefit of the University must communicate their idea and intention to members of the Office of Philanthropic Giving staff, under the leadership of the Associate Vice President for Philanthropic Giving, prior to any approach to specific prospects such as individuals, foundations, or corporations. This requirement, which applies to all friends, volunteer groups, intercollegiate athletic programs, as well as to student and alumni groups, is intended to protect existing relationships between donors and campus representatives and to avoid over-solicitation of any individual or organization. In cases where a conflict appears to exist

(e.g., two different academic units wishing to solicit the same individual or organization), the Vice President for University Advancement and the parties involved will work together to arrive at a satisfactory solution.

#### The CSUSB Philanthropic Foundation

The CSUSB Philanthropic Foundation is a non-profit corporation that raises and manages gifts from individuals and other entities for the benefit CSUSB. The Foundation is comprised of business and civic leaders who care about CSUSB and who advance its mission by seeking and securing private support for all its programs. Overseen by the Board of Directors and staffed by a team of advancement professionals who are University employees, the Foundation administers and records all gifts in accordance with donors' wishes. Established in 2011, under California law, the Foundation is the catalyst and conduit through which gifts and endowment income flows. The Foundation is not an object of philanthropy itself, but a mechanism through which private support is raised and managed for the sole benefit of CSUSB. The philanthropy received by the Foundation is managed by, and all corporate powers of the Foundation are vested in its Board of Directors.

Of increasing importance is the CSUSB Philanthropic Foundation's responsibility for the fiscal administration of all charitable contributions received on behalf of the University from individuals and other entities. All monies and gifts-in-kind received into the Foundation from these sources are routed through University Advancement to provide for proper recording and acknowledgment. Funds are invested according to policies established by the Foundation Board and disbursed according to donor specifications provided that these do not conflict with Foundation and CSUSB policies, and University Advancement procedures.

#### Gift Acceptance

The Gift Acceptance Policy provides a set of standards by which gifts are reviewed, accepted, processed and receipted by the Foundation. Except for those gifts that are required to be authorized by the Gift Acceptance Committee, the Vice President for University Advancement or his/her designee, is the delegated authority to accept gifts.

The Foundation recommends that all donors and prospective donors seek advice from their professional advisors to ensure their proposed giving meets their own charitable, financial and estate planning goals. It is not within the purview of CSUSB or University Advancement staff to provide legal, accounting or tax advice to prospective donors.

The Foundation may accept unrestricted gifts and gifts designated towards specific programs, scholarships and other restricted purposes, provided that such gifts are consistent with its bylaws and the mission, purposes and priorities of CSUSB

## Types of Gifts

Cash

Tangible personal property

Securities

Cryptocurrency

Real Estate

Remainder Interests in Property

Mineral, oil and gas interests

Bargain sales

Life insurance policies

Charitable gift annuities

Charitable remainder trusts

Charitable lead trusts

Retirement plan beneficiary designations

Bequests

## Criteria for Acceptance of Gift Types

A gift is defined as any contribution received by CSUSB for either unrestricted or restricted use in the furtherance of CSUSB's mission that involves a transfer of money or property from a donor without reciprocity. CSUSB and the Foundation follow IRS Regulations and Council for Advancement and Support of Education (CASE) guidelines for gift acceptance.

Cash – gifts may be accepted in the form of cash, checks or credit cards. Credit card fees are at the expense of the Foundation.

Tangible Personal Property/Gifts-in-Kind – Acceptance of all gifts of tangible personal property shall be governed by CSUSB's Gifts-in-Kind Acceptance Procedure. The final determination on the authorization to accept tangible property gifts may be made by the Gift Acceptance Committee.

Once gifts-in-kind have been valued and processed, those items will then be transferred to the appropriate stateside campus organization, depending on the gift, in partnership with the Procurement Office in the Division of Administration and Finance. This would include gifts that would be maintained

by the Robert and Frances Fullerton Museum of Art (for works of art to be held in the museum's permanent collection), John M. Pfau Library, colleges, divisions and the CSUSB Palm Desert Campus.

**Gifts of Software** – In order for the Foundation to accept a gift of software, the donor must irrevocably transfer ownership of the property to the University. There must be no implicit or explicit statement of exchange, purchase of services, or provision of exclusive information.

**Publicly Traded Securities** – Gifts of securities and mutual funds regularly traded on a public stock exchange shall be sold upon receipt unless otherwise agreed by the Gift Acceptance Committee. No employee or volunteer working on behalf of the Foundation may commit to a donor that a particular security will be held by the Foundation, sold through a specific broker or traded on instruction of the donor without the approval of the Executive Director of the Foundation. In some cases, applicable securities laws may restrict the sale of marketable securities; in such instances, the Gift Acceptance Committee shall make the final determination on the authorization to accept the restricted securities.

**Closely Held Securities** – Closely held securities include not only debt and equity positions in non-publicly traded companies but also interests in LLPs and LLCs or other ownership forms. These gifts must be reviewed prior to acceptance to determine that:

There are no restrictions on the security that would prevent ultimately converting these assets to cash;

The security is or will be marketable; and

The security will not generate any unacceptable tax or other consequences or liabilities for CSUSB and the Foundation

Upon consultation with investment advisors and Foundation legal counsel, efforts will be made to sell non-marketable securities to maximize return on investment. The final determination on the authorization to accept closely held securities shall be made by the Gift Acceptance Committee.

**Cryptocurrency** – Virtual currency/digital assets are classified as a property asset by the IRS and are subject to qualified third-party appraisal requirements if donor intends to claim a deduction over \$5000. Cryptocurrency gifts reviewed and accepted upon recommendation from the Gift Acceptance Committee may be sold upon receipt unless otherwise agreed by the Gift Acceptance Committee. If the Gift Acceptance Committee decides it will not accept a gift of cryptocurrency directly, the Foundation may still encourage donors to work with a Foundation-preferred third party to accept the gift of cryptocurrency, and indirectly support the Foundation. For example, the donor could make the gift to a donor-advised fund (DAF) sponsor, and later recommend grants from the DAF to the Foundation.

**Real Estate** – The Foundation, upon recommendation of the Executive Committee and the Gift Acceptance Committee and in consultation with external advisors, has authority to accept real estate

gifts, either outright or in trust, and whether or not intended for prompt conversion to cash, subject to the following parameters and CSUSB's Gifts-in-Kind Acceptance Procedure.

Gifts of real estate are limited to the following[SG1] :

Donated real property that may be sold or otherwise conveyed at fair market value;

Donated real property that generates an income stream to support the educational mission; and,

Donated real property used for programmatic purposes. The title is in a form satisfactory to the University and/or the Foundation. A current (within 60 days) qualified appraisal of the fair market value of the property, paid for by the donor, has been received and reviewed and together with a site inspection, does not reveal any leases, easements, encumbrances, conditions, or other limitations that would decrease the value of the property

If the review performed in the preceding paragraph notes the potential existence of environmental risks, a Phase I environmental impact study is conducted and the results of that study conclude the property does not present an unacceptable level of environmental risk..

The donor confirms that the donor is not under any legal obligation to sell or otherwise convey the property to a third party. Gifts of mortgaged property are not typically accepted.

.Donor has acknowledged and concurred regarding any holding or other administration costs that may be deducted from the sale of the property before the net proceeds are distributed in accordance with donor restrictions.

Donated real property may be sold or otherwise conveyed at fair market value, consistent with any gift restrictions and upon concurrence by the Executive Director of the Philanthropic Foundation. Generally, donated property will be sold at the first opportunity. Additional procedures are addressed in CSUSB's University Advancement procedures for Gifts-in-Kind acceptance.

Remainder Interests in Property or Retained Life Estate – The Foundation may accept a remainder interest subject to the provisions for accepting real estate gifts herein. In the case of the retained life estate, a donor may irrevocably give a personal residence or vacation home and reserve the use of the property for life or a term of years. Where the Foundation receives a gift of a remainder interest, all expenses for maintenance, insurance, real estate taxes, other carrying costs, and any property indebtedness are to be paid by the donor or primary beneficiary.

Mineral, Oil, and Gas, (MOG) Interests – The Foundation may accept oil, gas and mineral property interests, when appropriate. Prior to acceptance of an oil, gas and mineral interest the gift shall be approved by the Gift Acceptance Committee, and if necessary, by appropriate legal counsel and external advisors. Criteria for acceptance of the MOG interest shall include:

Gifts shall have specified minimum values and yearly income.

A review of the history of the property, known occupants and a site inspection conducted by the Division of Administration and Finance (or designee), reveals no extended liabilities or other considerations that make receipt of the gift inappropriate.

A working interest is rarely accepted. A working interest may only be accepted where and when there is a plan to minimize potential liability and tax consequences.

The property must undergo an environmental review to ensure that neither CSUSB nor the Foundation has any current or potential exposure to environmental liability. The cost of this review may be paid by the donor(s) or the Foundation, subject to negotiation at the time of gift review.

Bargain Sales – The Foundation may enter into bargain sale arrangements which are part gift/part sale and may include any type of property acceptable as a gift in kind. All bargain sales, including the source of funds to complete the sale, must be reviewed and recommended by the Gift Acceptance Committee and approved by the Foundation board, as appropriate.

Life Insurance – The Foundation must be named as both owner and irrevocable beneficiary of an insurance policy before a life insurance policy can be recorded as a gift. A gift of a life insurance policy will not be accepted unless there is a clear and enforceable plan for payment of future premiums.

Charitable Gift Annuities – The Foundation's gift annuity program is administered through The CSU Foundation. The CSU Foundation uses rate tables prepared by the American Council on Gift Annuities, a national non-profit organization. Annuity rates are determined by the age of the annuitant(s). The minimum age of annuitants is fifty-five years of age at the time income payments begin.

Charitable Remainder Trusts (CRT) – The Foundation may accept designation as Trustee of a CRT with the approval of the Gift Acceptance Committee if at least 50 percent of the trust remainder is designated irrevocably to the Foundation. If less than 50 percent the delegated authority for the Foundation may accept a designation as a beneficiary for a CRT.

Charitable Lead Trusts (CLT) – The Foundation may accept a designation as income beneficiary of a CLT and may accept an appointment as Trustee of a CLT on a case-by-case basis as approved by the Gift Acceptance Committee.

Retirement Plan Beneficiary Designations – Donors and supporters of CSUSB may name the Foundation as beneficiary of a retirement plan. Such designations will be recorded as a gift expectancy to CSUSB at the current face value if the plan holder meets age minimum..



Life Insurance Beneficiary Designations - Donors and supporters of CSUSB may name the Foundation as beneficiary or contingent beneficiary of their life insurance policies. Primary beneficiary designations may be recorded as a gift expectancy to CSUSB at the current face value, subject to age minimum, and as gifts at the time the designation becomes irrevocable.

Bequests – Donors and supporters of CSUSB may make bequests to the Foundation through wills and trusts. Such bequests, revocable or irrevocable, will be recorded as a gift expectancy to CSUSB at the current face value provided the donors meet minimum age and documentation requirements.

Property not otherwise described above, whether real or personal, of any type (including copyrights, trademarks, royalties, servitudes, easements or other incorporeal rights) will follow CSUSB's University Advancement's GIK Acceptance Procedures and may be accepted only after review and approval by the Gift Acceptance Committee.

The Foundation will not accept gifts that are determined to be too restrictive in purpose. Gifts that conflict with the terms of the Foundation's charter, gifts that are too difficult or costly to administer or that may incur liability, gifts that are for purposes outside the mission of CSUSB or those that diminish the academic integrity or reputation of the institution will not be accepted. All final decisions on the restrictive nature of a gift, and its acceptance or refusal, may be directed to the Gift Acceptance Committee.

The Foundation Gift Acceptance Committee shall consist of the University's Vice President Cabinet which consists of:

The Vice President for University Advancement (chair)

The Vice President for Administration and Finance

The Vice President for Student Affairs

The Vice President for Information Technology and Services

University Provost

The committee is responsible for authorizing the acceptance of gifts that fall outside the purview of standard fundraising operations. Examples of such gifts may include:

Outright gifts of real property or an interest in real property

Gifts that require construction/renovation of facilities not previously authorized by the University

Gifts of real or illiquid property when a bequest is realized

Gifts of cryptocurrency/digital assets

Gifts of artwork, archives, literary collections, historic papers and other creative gifts, other than those accepted with the intent to market and convert to cash. (The Art Acquisition Committee will recommend to accept/not accept works of art to the Gift Acceptance Committee. The RAFFMA Acquisition Committee must approve gifts to the Robert and Frances Fullerton Museum of Art.)

Fundraising Expenses

A percentage of all undesignated income is identified each year to promote the success of the University's Advancement program. In an effort to secure a permanent and reliable source of funding for University Advancement and its fundraising programs, all charitable gifts received by the Foundation are required to provide a one-time amount equivalent to five percent (5%) of the principal of the total gift. These monies are directed to a dedicated fund to support campus-wide University Advancement and Philanthropic Giving efforts..

Review of Policy

The Gift Acceptance Policy will be reviewed by University Advancement periodically and at least every five years to determine if any amendments are needed to reflect changes in law or to address new scenarios not referenced above. Any gifts not governed in this policy will be addressed in CSUSB's University Advancement procedures for gift acceptance.

[Gift Acceptance Policy | CSUSB](#)

<https://www.csusb.edu/policies/gift-acceptance-policy#:~:text=If%20the%20Gift%20Acceptance%20Committee%20decides%20it%20will,gift%20of%20cryptocurrency%2C%20and%20indirectly%20support%20the%20Foundation.>

FOUNDATION OPERATING AGREEMENT

Formatted: Font: Not Bold

Formatted: Footer distance from edge: 0.38", Different first page header

AGREEMENT

by and between

Formatted: Font: Times New Roman

CLARK COLLEGE

Formatted: Font: Times New Roman

and

Formatted: Font: Times New Roman

THE CLARK COLLEGE FOUNDATION

This Foundation Operating Agreement (this "Agreement") is entered into by and between Clark College, Community College District No. 14 (~~the "College"~~), and the Clark College Foundation, a Washington nonprofit corporation under RCW 24.03 (~~the "Foundation"~~).

WHEREAS, the College, pursuant to RCW 28B.50.140(8), may receive such gifts, grants, conveyances, devises and bequests of real and personal property from private sources, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out College programs; and

WHEREAS, the College has, from this express power to receive property, the implied power to solicit the same; and

WHEREAS, the College has the authority to enter into contracts for these and other lawful purposes; and

WHEREAS, the Foundation was organized and incorporated in 1973 for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, foundations, and others for the benefit of the College; and

WHEREAS, the Foundation as a tax-exempt, 501(C)3, nonprofit corporation is organized and operated to receive and administer property for the exclusive benefit of the College and to make contributions, grants, gifts, and transfers of property to the College; and

Formatted: Indent: First line: 0.5"

WHEREAS, the Foundation is empowered by the College to solicit and receive contributions, grants, gifts, and property in the name and on behalf of the College and receive property and to make contributions, grants, gifts and transfers of property to the College; and

WHEREAS, the Foundation and College agree that the Foundation may, under prescribed conditions, accept Committed Gifts and Expectancies that have a primary purpose of benefiting the College and Completed Gifts that qualify for the exception to the exclusive benefit requirement (as set forth in the Gift Acceptance Policy); and

WHEREAS, the Articles of Amendment of Clark Community College District No. 14 Foundation, filed with the Secretary of State of the State of Washington on December 15, 2009, which amend and replace the Foundation's pre-existing Articles of Incorporation of (the Foundation "Articles of Amendment") set forth in Article 3 ~~state~~ the purpose of the Foundation to be as follows:

Formatted: Font: Not Italic

The Corporation is organized in order to: Operate exclusively for the purposes of promoting, supporting, maintaining, developing, increasing, and extending educational offerings and the pursuit thereof at or in connection with state community colleges operated by Clark Community College District No. 14, State of Washington, hereinafter referred to as 'District No. 14', except as provided in the Foundation Operating Agreement pertaining to Completed Gifts, Committed Gifts, and Expectancies; and, in furtherance of the foregoing, to conduct any and all scientific, literary, charitable, and educational activities permitted both to an organization exempt under Section 501(c)(3) of the Internal Revenue Code, (hereinafter "Code"), or acts amendatory thereof or supplementary thereto, and by chapter 24.03 RCW, as now or hereafter amended.

The phrase "educational offerings" as used in this article shall be construed to mean and include all activities designed to: facilitate and/or enhance the cultural, educational, living, and operational conditions at District No. 14; establish, acquire, maintain, enlarge, and expand the curriculums, services, faculty, staff, and the real and personal properties of District No. 14; and, provide financial or other assistance to the students, faculty, and staff of District No. 14 in their efforts to acquire and/or provide an education.

~~The~~ WHEREAS, for purposes of this Operating Agreement, the terms "Completed Gift, Committed Gift and Expectancy" shall be defined as follows:

1. "Completed Gift" means a ~~transfer~~ that is irrevocable, accepted by the Foundation and is to be used for wholly charitable purposes. Such gift may be outright, in trust or otherwise and may (or may not) be subject to terms and conditions.

2. "Committed Gift" means a ~~transfer~~ that is irrevocable, accepted by the Foundation and ~~non-charitable and charitable beneficiaries~~ each hold an interest (e.g., charitable remainder trust wherein a non-charitable beneficiary holds the present interest and the charitable beneficiary holds the remainder interest). In addition, such gift will be in trust or otherwise and will be subject to terms and conditions. Such gift will become a Completed Gift upon the occurrence of ~~an~~ specified event or events (e.g., death of a non-charitable beneficiary).

3. "Expectancy" means a ~~revocable~~ written plan to make a transfer to a charitable beneficiary in the future upon the occurrence of an event (e.g., death of the donor). Upon such event, the Expectancy will become a Completed Gift or a Committed Gift. And;

WHEREAS, in connection with its fundraising and asset-management activities, the Foundation employs personnel with expertise in advancement services, fundraising, gift planning, investment management, and other capacities necessary for the fulfillment of its mission and works with the College to assist and advise in such activities; and

Formatted: Line spacing: Exactly 9 pt

WHEREAS, the Foundation and College recognize that close collaboration and cooperation is necessary to (a) appropriately serve the educational mission and priorities of the College; and (b) ~~to avoid competition for funds or unproductive duplication of effort efficiently and effectively achieve the goals and purposes of the Foundation;~~ ;

NOW, THEREFORE, in consideration of the mutual commitments herein, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereby agree as follows:

## I. SEPARATE OBLIGATIONS

### A. The Foundation shall:

1. -Expend its best efforts to seek ~~to~~ and accrue gifts, grants, conveyances, devises, and bequests of money and real and personal property to sustain Foundation operations and for the benefit of the College; and in alignment with the College's established development priorities. For this purpose, it will design and implement a Gift Acceptance Policy approved by the College Board of Trustees to solicit and receive such money and property ~~and also to acquire such property~~ by purchase, lease, exchange or otherwise, all to further the ~~purposes of the educational mission of the College as determined by the Board of Trustees in.~~ The Foundation works to align its efforts to support the College's stated goals, objectives, and priorities;

Formatted: Indent: First line: 0.5"

Commented [A1]: Need to update and confirm if this policy is complete/has been approved by the Board of Trustees. If not, need to present to BOT.

2. -Comply with all applicable federal and state laws. For this purpose, the Foundation will establish rules and procedures for the management of all affairs of the Foundation in accordance with (a) the requirements for tax-exempt entities under the federal Internal Revenue Code, including its section 501(c)(3), and (b) the laws of the State of Washington applicable to the Foundation including, but not limited to, those governing charitable solicitations (e.g., RCW 19.09), nonprofit corporations (e.g., RCW 24.03; RCW 24.03A; RCW 23.95), trusts holding property for charitable purposes ~~-(e.g., RCW 11.110), and serving as Trustee (e.g., RCW chapter 24.03-035(18) and 24.03A and RCW 11.36.021(1)(e)), and the authority of state agencies (e.g., RCW 11.110 and 43.09);~~

3. -Tender to the College immediately all gifts and donations ~~it may receive~~ the Foundation receives wherein the College is designated ~~as~~ and the Foundation is aware the donor intended the College to be the direct and immediate recipient, and properly account and be responsible for all donations which designate the Foundation as the direct and immediate recipient;

4. -Accept, hold, administer, invest, disburse, and dispose of ~~such~~ funds and properties of any kind or character as from time to time may be given to it, in accordance with the terms of such gifts. ~~However, any~~ The Foundation shall accept restricted or conditional gift which in any way obligates gifts that obligate the College ~~shall not be accepted by the Foundation unless in any way, only if~~ acceptance is (a) consistent with the Gift Acceptance Policy previously approved by the College, or (b) approved in writing by the College President or other College official specifically delegated with written authority to approve such gifts on behalf of the College;

Formatted: Line spacing: Exactly 9 pt

5. -Make contributions, grants, gifts, and transfers of property, both real and personal, either outright or in trust, to or for the benefit of the College;

6. -Use all assets and earnings of the Foundation for the exclusive benefit of the College or for payment of necessary and reasonable administrative expenses of the Foundation, except as provided in Section I.A.9 pertaining to Completed Gifts, Committed Gifts, and Expectancies. No part of such assets and earnings shall accrue to the benefit of any director, officer, member, or employee of the Foundation or of any other individual, except for appropriate payment of reasonable compensation for services actually rendered or reimbursement of reasonable expenses necessarily incurred;

7. Not merge, consolidate, or change the Foundation's Articles of Incorporation without the written consent of the College;

8. Act in cooperation with the College faculty and staff and Foundation staff shall conduct themselves, in their professional capacities, in accordance with the College's operational policies and procedures as determined by the College Board of Trustees.

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

9. Notwithstanding any other provision of this Section I.A., may establish or accept and administer Completed Gifts, Committed Gifts, and Expectancies, subject to the applicable ~~provisions of state law. Completed Gifts, Committed Gifts, and Expectancies will be accepted~~ only pursuant to and consistent with a written Gift Acceptance Policy adopted by the Foundation. Provided, such Gift Acceptance Policy shall be approved in writing by the College Board of Trustees, and adopted by the Foundation.

Formatted: Indent: First line: 0.5"

~~10. Except for funds described in Section III.G below, which shall be treated according to the terms of that Section, Foundation agrees that any funds held by the Foundation that do not meet the obligations of the Foundation set forth in Sections I.A.1. through I.A.9. above will be divested by the Foundation on June 30, 2010, or as otherwise agreed in writing.~~

10. Be responsible for investment decisions and proper stewardship of Foundation assets; employment and compensation decisions regarding Foundation employees; risk management decisions; and day-to-day control of Foundation operations.

B. The College shall:

1. - Oversee the mission, leadership, and operations of the College, in accordance with applicable law.

2. Communicate to the Foundation, on a regular basis, the priorities and long-term plans of the College, as approved by the Board of Trustees.

3. Allow the Foundation to continue to use the College's name in fundraising activities providing that Foundation activities are consistent with the terms of this Agreement and with the Foundation's Articles of Incorporation, as now on file with the Secretary of State or as later amended, following approval of amended Articles of Incorporation by the

Formatted: Indent: First line: 0.5"

Formatted: Line spacing: Exactly 9 pt

College Amendment, as amended from time to time pursuant to Section I.A.7 above.

Formatted: Widow/Orphan control

~~2. Assist the Foundation in providing services by making available to the Foundation directory information of those current and former students who have not opted out of disclosure of their directory information for the purpose of carrying out Foundation duties under this agreement. In addition, the Foundation shall be allowed access to student transcript and registration records (in accordance with a policy to be established by the College) for the purpose of verifying scholarship and other award eligibility. The Foundation agrees to manage student records obtained from the College in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 USCA §1232g, guidelines and will not disclose student records to third party vendors for those entities' further commercial use of the information. The Foundation further agrees that employees accessing student records shall abide by the same policies that the College requires of its employees using similar student records.~~

4. Provide the Foundation with use of supplies and services as reasonably required for its operation, including but not limited to, computing services, publicity services, landscaping and maintenance, mail-Foundation operations as outlined in the annual budget developed on Schedule 1 as described in Section III.E herein.

~~3. 5. Timely respond to and cooperate to resolve requests to amend Schedule 1, out of cycle, as needed, to address developing supply and service, postage and meeting space requirements that require timely action.~~

Formatted: Indent: First line: 0.5", Space After: 0 pt, No bullets or numbering

~~4. So long as consistent with Collective Bargaining Agreements, provide the Foundation access to all communication vehicles provided to College personnel in accordance with the College administration policies and procedures manual.~~

~~5. 6. Make College employees available, as necessary and appropriate, to assist the Foundation in executing its development programs. The time allocated to services to a College employee spends supporting the Foundation shall not be equivalent to full-time employment for any College that employee.~~

Formatted: Indent: First line: 0.5", No bullets or

Formatted: Condensed by 0.15 pt

7. Recognize the Foundation is a separate, private corporation with the authority to control its day-to-day operations and to keep all records and data confidential, consistent with the law.

8. Ensure the College President and one College Trustee serve as ex-officio, non-voting members of the Foundation Board and shall assume prominent roles in fundraising activities.

9. Invite the Foundation Chief Executive Officer ("CEO") to meet with the College President and/or designee(s) regularly, as mutually agreed between the College President and Foundation CEO.

10. Include the Foundation as an active and prominent participant in strategic planning for the College.

Formatted: Line spacing: Exactly 9 pt

11. Include the Foundation contact information on the main campus email and telephone directories. When reasonably requested, the College's Communications and Marketing Department will review Foundation messages for potential distribution to college-wide or targeted audiences.

12. Ensure that gift funds and other privately contributed resources are used in compliance with donor intent.

13. Act in cooperation with the Foundation staff.

## II. ACCOUNTING AND AUDITING

To provide proper accounting and auditing for the property and services provided by each party under Article I of this Agreement:

A. Accounting and fiscal functions for the Foundation are performed by the Foundation.

B. The Foundation is a separate entity from the College, and it shall be periodically audited by a reputable independent accounting firm.

C. The College is a state institution of higher education, and it shall be audited by the State Auditor's Office in accordance with state law.

D. The Foundation shall annually confirm to the College (1) that it has fully complied with its obligations to expend its best efforts to seek to accrue gifts, grants, donations and endowments for the benefit of the College; and (2) that it has used all assets and earnings of the Foundation, except funds held pursuant to Section I.A.9, for the exclusive benefit of the College or the payment of necessary and reasonable administrative expenses of the Foundation, ~~except funds held pursuant to Section I.A.9.~~ For this purpose, the Foundation will list its accomplishments for the preceding year and share with the College its audited financial statement, revenue and expense statements for the preceding year, and its end-of-year balance sheet. The Foundation is not required to report on Section I.A.9 funds.

E. Notwithstanding the independent status of the Foundation and the College, the parties agree that in order to fully accomplish their respective missions, the Foundation and the College must cooperate and support each other. The Foundation and the College agree that each entity will provide the other with certain services, facilities, equipment, personnel, or other items of value, to carry out the purpose of this Agreement. The value exchanged by the Foundation and the College, pursuant to this paragraph, constitute in part the consideration for this Agreement. The value of all space and equipment, supplies, personnel, and other services which the College provides to the Foundation shall not exceed the total amount of \$200,000 agreed upon by the College and the Foundation in Schedule 1, in any fiscal year. ~~The College will regularly keep track of the space and equipment, supplies, personnel, and other services it is providing. Schedule 1 shall be negotiated annually prior to assure that this maximum amount is not being exceeded, or during the Foundation's annual budgeting process.~~ The College business office will annually prepare, and the ~~Presidents~~ CEO of the Foundation and the College President and/or their authorized designees will annually review, a semi-annual and a post-closing summary of the transactions between the two parties to

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Line spacing: Exactly 9 pt



assure that ~~the maximum of \$200,000 for services the College provides to the Foundation~~this maximum has not been exceeded.

F. The Foundation shall cooperate fully with any request ~~for~~by the College to review of the Foundation financial records for the sole purpose of ensuring compliance with this Agreement, including permitting the College President or designee to inspect ~~and copy~~ financial records, unrelated to Section I.A.9 funds.

G. The College President, on an annual basis, shall provide evaluation and feedback to the Foundation Board Chair on the performance of the Foundation CEO. The College President shall participate in any committee of the Foundation's Board of Directors created to recruit and/or hire the Foundation CEO. The Foundation Board shall request and consider input from the College President and Trustee who serve on the Foundation Board for their recommendations in the hiring process, but the voting members of the Foundation Board shall make the final hiring decision.

### III. OTHER AGREEMENTS

~~A.A. Trade Secrets – The parties agree that the Foundation's donor list and donor information constitute "trade secrets" as they (i) are fundamental to the Foundation's purpose and business, (ii) are not known or readily accessible by competitors including other institutions of higher education, (iii) have commercial value, (iv) provide the Foundation with a competitive advantage in the marketplace for grants and donations, (v) the Foundation makes reasonable efforts to not disclose and maintain the secrecy of this information, including but not limited to promising donors and prospective donors that their information will be treated confidentially.~~

B. Data Sharing and Security Agreement: The parties each acknowledge that they may be provided access to the other party's confidential data, including trade secrets and FERPA protected student information; and each agrees that it and its vendors shall abide by a Data Sharing and Security Agreement (Attachment A), which may be amended from time to time. For any data shared with the Foundation, the Foundation agrees to use student records obtained from the College in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 USCA §1232g guidelines, as applicable, and will not disclose student records to third-party vendors for those entities' further commercial use of the information. The Foundation further agrees that employees accessing student records shall abide by the same policies that the College requires of its employees using similar student records. The College agrees to use donor information in accordance with Foundation policies, including but not limited to the Donor Bill of Rights, and will not disclose donor information unless and until informed by the Foundation CEO that the confidentiality protections have expired or have been terminated, or otherwise required to by law. Access to and use any Foundation donor information requires approval from the Foundation CEO. Foundation donor information can never be used for commercial purposes.

C. Independent Capacity: At all times and for all purposes of this Agreement, each party shall act in an independent capacity and ~~not as~~ shall not hold itself out as or otherwise be considered to be an agent or representative of the other party.

Formatted: Justified

Formatted: Line spacing: Exactly 9 pt

~~BD.~~ No Indemnification: Each party shall be responsible for the actions and inactions of itself and its own officers, employees, and agents acting within the scope of their authority.

~~CE.~~ No Assignment: This ~~agreement~~Agreement is not assignable, by either party, in whole or in part.

~~DE.~~ Governing Law and Disputes: This Agreement shall be governed by the laws of the State of Washington. Before instituting any legal action hereunder, a party, through its President or CEO, shall meet with the President/CEO of the other party and attempt in good faith to resolve the disagreement. Venue of any action hereunder shall be in Clark County Superior Court.

~~EG.~~ Entire Agreement: This Agreement constitutes the entire agreement of the parties, including all oral understandings, on the subject of their general and overall relationship. However, the parties may enter into other stand-alone agreements on specific subjects. All such other agreements shall also be in writing, signed by the parties, and approved as to form by the Attorney General or designee.

~~FH.~~ Modification: The parties shall review this Agreement at least every four years, prior to the anniversary date of the Agreement. No alteration or modification of any term of this Agreement shall be valid unless made in writing, signed by the parties, and approved as to form by the Attorney General or designee.

~~G.~~ Divesting Funds Held Pursuant to RCW 28B.50.835-.844: I. Investment Services. The Foundation and College ~~previously agreed~~agree that the Foundation ~~would~~may accept, hold, invest, protect, administer, and disburse funds received from the State ~~and, the federal government, or other sources~~ under the exceptional faculty awards program in accordance with RCW 28B.50.835-.844 and WAC 131-16-450. ~~The Foundation agrees that, on June 30, 2010, all exceptional faculty award funds held pursuant to that previous agreement, whether principal, interest, or otherwise return on funds held or invested pursuant to the exceptional faculty awards, shall be transferred from the Foundation to the College or a designee identified by the College in writing, together with an accounting~~behalf of the returned funds. The Foundation will no longer hold any funds~~College. See, for the exceptional faculty awards following return~~example, RCW 28B.50.835-.844; WAC 131-16-450; and Federal Department of the existing funds~~Education (Title III) matching endowment funds (collectively "Endowment Funds"). When managing these funds, the Foundation is providing an investment management services to the College and may collect an administrative fee for its services. The Foundation may also withdraw a programmatic distribution from these funds each year. Funds will be managed in accordance with the Foundation's investment and distribution policies.~~

Formatted: No underline

Formatted: Line spacing: Exactly 9 pt

H. Termination: The term of this Agreement shall be four years from the date this Agreement is fully executed. This Agreement shall ~~continue until automatically renew for successive four year periods, unless otherwise terminated. It as provided herein.~~ This Agreement may be

<p>Approved as to form:</p>	<p>Approved as to form:</p>
<p>CLARK COLLEGE FOUNDATION</p>	<p>CLARK COLLEGE Assistant Attorney General</p>
<p>By _____ _____ _____, Chair _____ Foundation Board of Directors</p>	<p>By _____ _____ _____, Chair _____ College Board of Trustees</p>

Formatted: Position: Vertical: 0.68", Relative to: Paragraph  
Formatted Table

terminated by either party only at the end of a State fiscal biennium, upon written notice to the other party given at least ninety (90) days in advance. ~~However this Agreement or a successor overall agreement with the College shall be necessary for the Foundation to operate.~~

Formatted: Font: Times New Roman

Upon sending or receiving a notice of termination, the Foundation CEO and College President shall work together cooperatively to establish a mutually-agreeable Termination Date and to implement a program to wrap up and dissolve the Foundation's operations, in accordance with RCW chapter 24.03 or 24.03A, as applicable, prior to the Termination Date.

1. 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 a reasonable time after receiving written show cause notice to the Chief Executive and Board Chair of the defaulting party.

2. Consistent with provisions appearing in the Foundation's bylaws and its articles of incorporation, should the Foundation cease to exist or cease to be an Internal Revenue Code 501(c)(3) nonprofit corporation, the Foundation will transfer its assets and property to the College, to a reincorporated successor Foundation, to another 501(c)(3) organization affiliated with the College, or to the state or federal government for public purposes, in accordance with the law and donor intent.

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of the parties on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

<p>CLARK COLLEGE FOUNDATION</p>	<p>CLARK COLLEGE</p>
<p>By _____ _____</p>	<p>By _____ _____</p>

Formatted: Line spacing: Exactly 9 pt



# FOUNDATION OPERATING AGREEMENT

by and between

CLARK COLLEGE

and

THE CLARK COLLEGE FOUNDATION

This Foundation Operating Agreement (this “Agreement”) is entered into by and between Clark College, Community College District No. 14 (the “College”), and the Clark College Foundation, a Washington nonprofit corporation under RCW 24.03 (the “Foundation”).

WHEREAS, the College, pursuant to RCW 28B.50.140(8), may receive such gifts, grants, conveyances, devises and bequests of real and personal property from private sources, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out College programs; and

WHEREAS, the College has, from this express power to receive property, the implied power to solicit the same; and

WHEREAS, the College has the authority to enter into contracts for these and other lawful purposes; and

WHEREAS, the Foundation was organized and incorporated in 1973 for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, foundations, and others for the benefit of the College: and

WHEREAS, the Foundation as a tax-exempt, 501(C)3, nonprofit corporation is organized and operated to receive and administer property for the exclusive benefit of the College and to make contributions, grants, gifts, and transfers of property to the College; and

WHEREAS, the Foundation is empowered by the College to solicit and receive contributions, grants, gifts, and property in the name and on behalf of the College and receive property and to make contributions, grants, gifts and transfers of property to the College; and

WHEREAS, the Foundation and College agree that the Foundation may, under prescribed conditions, accept Committed Gifts and Expectancies that have a primary purpose of benefiting the College and Completed Gifts that qualify for the exception to the exclusive benefit requirement (as set forth in the Gift Acceptance Policy); and

WHEREAS, the Articles of Amendment of Clark Community College District No. 14 Foundation, filed with the Secretary of State of the State of Washington on December 15, 2009, which amend and replace the Foundation’s pre-existing Articles of Incorporation (the “Articles of Amendment”) set forth in Article 3 the purpose of the Foundation to be as follows:

The Corporation is organized in order to: Operate exclusively for the purposes of promoting, supporting, maintaining, developing, increasing, and extending educational offerings and the pursuit thereof at or in connection with state community colleges operated by Clark Community College District No. 14, State of Washington, hereinafter referred to as ‘District No. 14’, except as provided in the Foundation Operating Agreement pertaining to Completed Gifts, Committed Gifts, and Expectancies; and, in furtherance of the foregoing, to conduct any and all scientific, literary, charitable, and educational activities permitted both to an organization exempt under Section 501(c)(3) of the Internal Revenue Code, (hereinafter “Code”), or acts amendatory thereof or supplementary thereto, and by chapter 24.03 RCW, as now or hereafter amended.

The phrase “educational offerings” as used in this article shall be construed to mean and include all activities designed to: facilitate and/or enhance the cultural, educational, living, and operational conditions at District No. 14; establish, acquire, maintain, enlarge, and expand the curriculums, services, faculty, staff, and the real and personal properties of District No. 14; and, provide financial or other assistance to the students, faculty, and staff of District No. 14 in their efforts to acquire and/or provide an education.

WHEREAS, for purposes of this Operating Agreement, the terms “Completed Gift, Committed Gift and Expectancy” shall be defined as follows:

1. “Completed Gift” means a transfer that is irrevocable, accepted by the Foundation and is to be used for wholly charitable purposes. Such gift may be outright, in trust or otherwise and may (or may not) be subject to terms and conditions.

2. “Committed Gift” means a transfer that is irrevocable, accepted by the Foundation and non-charitable and charitable beneficiaries each hold an interest (e.g., charitable remainder trust wherein a non-charitable beneficiary holds the present interest and the charitable beneficiary holds the remainder interest). In addition, such gift will be in trust or otherwise and will be subject to terms and conditions. Such gift will become a Completed Gift upon the occurrence of a specified event or events (e.g., death of a non-charitable beneficiary).

3. “Expectancy” means a revocable written plan to make a transfer to a charitable beneficiary in the future upon the occurrence of an event (e.g., death of the donor). Upon such event, the Expectancy will become a Completed Gift or a Committed Gift. And;

WHEREAS, in connection with its fundraising and asset-management activities, the Foundation employs personnel with expertise in advancement services, fundraising, gift planning, investment management, and other capacities necessary for the fulfillment of its mission and works with the College to assist and advise in such activities; and

WHEREAS, the Foundation and College recognize that close collaboration and cooperation is necessary to (a) appropriately serve the educational mission and priorities of the College; and (b) efficiently and effectively achieve the goals and purposes of the Foundation; ;

NOW, THEREFORE, in consideration of the mutual commitments herein, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereby agree as follows:

## I. SEPARATE OBLIGATIONS

A. The Foundation shall:

1. Expend its best efforts to seek and accrue gifts, grants, conveyances, devises, and bequests of money and real and personal property to sustain Foundation operations and for the benefit of the College and in alignment with the College's established development priorities. For this purpose, it will design and implement a Gift Acceptance Policy approved by the College Board of Trustees to solicit and receive such money and property by purchase, lease, exchange or otherwise, all to further the educational mission of the College as determined by the Board of Trustees. The Foundation works to align its efforts to support the College's stated goals, objectives, and priorities;

2. Comply with all applicable federal and state laws. For this purpose, the Foundation will establish rules and procedures for the management of all affairs of the Foundation in accordance with (a) the requirements for tax-exempt entities under the federal Internal Revenue Code, including its section 501(c)(3), and (b) the laws of the State of Washington applicable to the Foundation including, but not limited to, those governing charitable solicitations (e.g., RCW 19.09), nonprofit corporations (e.g., RCW 24.03; RCW 24.03A; RCW 23.95), trusts holding property for charitable purposes (e.g., RCW 11.110), and serving as Trustee (e.g., RCW chapter 24.03 and 24.03A and RCW 11.36.021);

3. Tender to the College immediately all gifts and donations the Foundation receives wherein the College is designated and the Foundation is aware the donor intended the College to be the direct and immediate recipient, and properly account and be responsible for all donations which designate the Foundation as the direct and immediate recipient;

4. Accept, hold, administer, invest, disburse, and dispose of funds and properties of any kind or character as from time to time may be given to it, in accordance with the terms of such gifts. The Foundation shall accept restricted or conditional gifts that obligate the College in any way, only if acceptance is (a) consistent with the Gift Acceptance Policy previously approved by the College, or (b) approved in writing by the College President or other College official specifically delegated with written authority to approve such gifts on behalf of the College;

5. Make contributions, grants, gifts, and transfers of property, both real and personal, either outright or in trust, to or for the benefit of the College;

6. Use all assets and earnings of the Foundation for the exclusive benefit of the College or for payment of necessary and reasonable administrative expenses of the Foundation, except as provided in Section I.A.9 pertaining to Completed Gifts, Committed Gifts, and Expectancies. No part of such assets and earnings shall accrue to the benefit of any director, officer, member, or employee of the Foundation or of any other individual, except for appropriate payment of

reasonable compensation for services actually rendered or reimbursement of reasonable expenses necessarily incurred;

7. Not merge, consolidate, or change the Foundation's Articles of Incorporation without the written consent of the College;

8. Act in cooperation with the College faculty and staff and Foundation staff shall conduct themselves, in their professional capacities, in accordance with the College's operational policies and procedures as determined by the College Board of Trustees.

9. Notwithstanding any other provision of this Section I.A., may establish or accept and administer Completed Gifts, Committed Gifts, and Expectancies, subject to applicable law and only pursuant to and consistent with a written Gift Acceptance Policy approved by the College Board of Trustees and adopted by the Foundation.

10. Be responsible for investment decisions and proper stewardship of Foundation assets; employment and compensation decisions regarding Foundation employees; risk management decisions; and day-to-day control of Foundation operations.

B. The College shall:

1. Oversee the mission, leadership, and operations of the College, in accordance with applicable law.

2. Communicate to the Foundation, on a regular basis, the priorities and long-term plans of the College, as approved by the Board of Trustees.

3. Allow the Foundation to use the College's name in fundraising activities providing that Foundation activities are consistent with the terms of this Agreement and with the Foundation's Articles of Amendment, as amended from time to time pursuant to Section I.A.7 above.

4. Provide the Foundation with use of supplies and services as reasonably required for Foundation operations as outlined in the annual budget developed on **Schedule 1** as described in Section III.E herein.

5. Timely respond to and cooperate to resolve requests to amend Schedule 1, out of cycle, as needed, to address developing supply and service requirements that require timely action.

6. Make College employees available, as necessary and appropriate, to assist the Foundation in executing development programs. The time a College employee spends supporting the Foundation shall not be equivalent to full-time employment for that employee.

7. Recognize the Foundation is a separate, private corporation with the authority to control its day-to-day operations and to keep all records and data confidential, consistent with the law.



8. Ensure the College President and one College Trustee serve as ex-officio, non-voting members of the Foundation Board and shall assume prominent roles in fundraising activities.
9. Invite the Foundation Chief Executive Officer (“CEO”) to meet with the College President and/or designee(s) regularly, as mutually agreed between the College President and Foundation CEO.
10. Include the Foundation as an active and prominent participant in strategic planning for the College.
11. Include the Foundation contact information on the main campus email and telephone directories. When reasonably requested, the College’s Communications and Marketing Department will review Foundation messages for potential distribution to college-wide or targeted audiences.
12. Ensure that gift funds and other privately contributed resources are used in compliance with donor intent.
13. Act in cooperation with the Foundation staff.

## II. ACCOUNTING AND AUDITING

To provide proper accounting and auditing for the property and services provided by each party under Article I of this Agreement:

- A. Accounting and fiscal functions for the Foundation are performed by the Foundation.
- B. The Foundation is a separate entity from the College, and it shall be periodically audited by a reputable independent accounting firm.
- C. The College is a state institution of higher education, and it shall be audited by the State Auditor’s Office in accordance with state law.
- D. The Foundation shall annually confirm to the College (1) that it has fully complied with its obligations to expend its best efforts to seek to accrue gifts, grants, donations and endowments for the benefit of the College; and (2) that it has used all assets and earnings of the Foundation, except funds held pursuant to Section I.A.9, for the exclusive benefit of the College or the payment of necessary and reasonable administrative expenses of the Foundation. For this purpose, the Foundation will list its accomplishments for the preceding year and share with the College its audited financial statement, revenue and expense statements for the preceding year, and its end-of-year balance sheet. The Foundation is not required to report on Section I.A.9 funds.
- E. Notwithstanding the independent status of the Foundation and the College, the parties agree that in order to fully accomplish their respective missions, the Foundation and the College must cooperate and support each other. The Foundation and the College agree that each entity will provide the other with certain services, facilities, equipment, personnel, or other items of value to carry out the purpose of this Agreement. The value exchanged by the Foundation and the College,

pursuant to this paragraph, constitute in part the consideration for this Agreement. The value of all space and equipment, supplies, personnel, and other services which the College provides to the Foundation shall not exceed the total amount agreed upon by the College and the Foundation in **Schedule 1** in any fiscal year. Schedule 1 shall be negotiated annually prior to or during the Foundation's annual budgeting process. The College business office will annually prepare, and the Foundation CEO and the College President and/or their authorized designees will annually review, a semi-annual and a post-closing summary of the transactions between the two parties to assure that this maximum has not been exceeded.

F. The Foundation shall cooperate fully with any request by the College to review Foundation financial records for the sole purpose of ensuring compliance with this Agreement, including permitting the College President or designee to inspect financial records, unrelated to Section I.A.9 funds.

G. The College President, on an annual basis, shall provide evaluation and feedback to the Foundation Board Chair on the performance of the Foundation CEO. The College President shall participate in any committee of the Foundation's Board of Directors created to recruit and/or hire the Foundation CEO. The Foundation Board shall request and consider input from the College President and Trustee who serve on the Foundation Board for their recommendations in the hiring process, but the voting members of the Foundation Board shall make the final hiring decision.

### III. OTHER AGREEMENTS

A. Trade Secrets – The parties agree that the Foundation's donor list and donor information constitute "trade secrets" as they (i) are fundamental to the Foundation's purpose and business, (ii) are not known or readily accessible by competitors including other institutions of higher education, (iii) have commercial value, (iv) provide the Foundation with a competitive advantage in the marketplace for grants and donations, (v) the Foundation makes reasonable efforts to not disclose and maintain the secrecy of this information, including but not limited to promising donors and prospective donors that their information will be treated confidentially.

B. Data Sharing and Security Agreement: The parties each acknowledge that they may be provided access to the other party's confidential data, including trade secrets and FERPA protected student information; and each agrees that it and its vendors shall abide by a Data Sharing and Security Agreement (**Attachment A**), which may be amended from time to time. For any data shared with the Foundation, the Foundation agrees to use student records obtained from the College in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 USCA §1232g guidelines, as applicable, and will not disclose student records to third-party vendors for those entities' further commercial use of the information. The Foundation further agrees that employees accessing student records shall abide by the same policies that the College requires of its employees using similar student records. The College agrees to use donor information in accordance with Foundation policies, including but not limited to the Donor Bill of Rights, and will not disclose donor information unless and until informed by the Foundation CEO that the confidentiality protections have expired or have been terminated, or otherwise required to by law. Access to and use any Foundation donor information requires approval from the Foundation CEO. Foundation donor information can never be used for commercial purposes.

C. Independent Capacity: At all times and for all purposes of this Agreement, each party shall act in an independent capacity and shall not hold itself out as or otherwise be considered to be an agent or representative of the other party.

D. No Indemnification: Each party shall be responsible for the actions and inactions of itself and its own officers, employees, and agents acting within the scope of their authority.

E. No Assignment: This Agreement is not assignable, by either party, in whole or in part.

F. Governing Law and Disputes: This Agreement shall be governed by the laws of the State of Washington. Before instituting any legal action hereunder, a party, through its President or CEO, shall meet with the President/CEO of the other party and attempt in good faith to resolve the disagreement. Venue of any action hereunder shall be in Clark County Superior Court.

G. Entire Agreement: This Agreement constitutes the entire agreement of the parties, including all oral understandings, on the subject of their general and overall relationship. However, the parties may enter into other stand-alone agreements on specific subjects. All such other agreements shall also be in writing, signed by the parties, and approved as to form by the Attorney General or designee.

H. Modification: The parties shall review this Agreement at least every four years, prior to the anniversary date of the Agreement. No alteration or modification of any term of this Agreement shall be valid unless made in writing, signed by the parties, and approved as to form by the Attorney General or designee.

I. Investment Services. The Foundation and College agree that the Foundation may accept, hold, invest, protect, administer, and disburse funds received from the State, the federal government, or other sources, on behalf of the College. See, for example, RCW 28B.50.835–.844; WAC 131-16-450; and Federal Department of Education (Title III) matching endowment funds (collectively “Endowment Funds”). When managing these funds, the Foundation is providing an investment management services to the College and may collect an administrative fee for its services. The Foundation may also withdraw a programmatic distribution from these funds each year. Funds will be managed in accordance with the Foundation’s investment and distribution policies.

J. Termination: The term of this Agreement shall be four years from the date this Agreement is fully executed. This Agreement shall automatically renew for successive four year periods, unless otherwise terminated as provided herein. This Agreement may be terminated by either party only at the end of a State fiscal biennium, upon written notice to the other party given at least ninety (90) days in advance.

Upon sending or receiving a notice of termination, the Foundation CEO and College President shall work together cooperatively to establish a mutually-agreeable Termination Date and to implement a program to wrap up and dissolve the Foundation’s operations, in accordance with RCW chapter 24.03 or 24.03A, as applicable, prior to the Termination Date.

1. 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 a reasonable time after receiving written show cause notice to the Chief Executive and Board Chair of the defaulting party.

2. Consistent with provisions appearing in the Foundation’s bylaws and its articles of incorporation, should the Foundation cease to exist or cease to be an Internal Revenue Code 501(c)(3) nonprofit corporation, the Foundation will transfer its assets and property to the College, to a reincorporated successor Foundation, to another 501(c)(3) organization affiliated with the College, or to the state or federal government for public purposes, in accordance with the law and donor intent.

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of the parties on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

<p>CLARK COLLEGE FOUNDATION</p> <p>By _____          _____,          _____, Chair          Clark College Foundation Board of Directors</p>	<p>CLARK COLLEGE</p> <p>By _____          _____,          _____, Chair          Clark College Board of Trustees</p>
	<p>Approved as to form:</p> <p>_____          Assistant Attorney General</p>

December 14, 2020

Dr. Karin Edwards, President  
Clark College  
1933 Fort Vancouver Way  
Vancouver, WA 98663

Dear Karin,

Per the foundation's operating agreement with the college dated December 28, 2009, the foundation represents the following items for the fiscal year ending June 30, 2020.

- 1) We have fully complied with our obligation to expend our best efforts to seek gifts, grants, donations and endowments for the benefit of the college. Contributions received for the year ended June 30, 2020 total \$3,433,000 which include cash, pledges, planned gifts and in-kind donations. Accomplishments during the year included raising funds for student scholarships (annual funds and endowment), student emergency grants, guided pathways, Veteran's Resource Center, surveying and geomatics, culinary facilities, and dental hygiene.
- 2) In circumstances where we serve as trustee or co-trustee of a committed gift, the aggregated value of benefits not meeting the Exclusive Benefit Requirement does not exceed 10% of the foundation's total assets.
- 3) We have used all assets and earnings of the foundation for the exclusive benefit of the college or the payment of necessary and reasonable administrative expenses of the foundation. Funds totaling \$5,417,000 were expended to support future college expansion, culinary COP payments, student scholarships, faculty salaries/professional education, vocational programs and equipment, and other areas of college program and student support. A breakdown of the expenditures are as follows:

\$1,626,000 - 10-acre Ridgefield land transfer  
\$1,237,000 - student scholarships  
\$600,000 - culinary COP payments  
\$573,000 - foundation staff wages/benefits in support of college programs  
\$435,000 - college affiliated staff salaries/benefits/stipends  
\$185,000 - supplies, catering & meeting expenditures  
\$148,000 - college program support for various departments and projects  
\$138,000 - donated supplies/software/equipment for college use  
\$130,000 - foundation funds allocation (IT replacement, professional development, etc.)  
\$106,000 - publications/memberships  
\$65,000 - professional and service provider expenditures

\$39,000 – travel and lodging for college personnel  
\$37,000 – staff development  
\$33,000 – discretionary funds for campus/community relations  
\$28,000 – equipment, maintenance & repairs  
\$19,000 – awards (including exceptional faculty and employee service awards)  
\$18,000 – scholarship management/support

- 4) We have completed our annual audit and have received an unmodified, or clean, opinion. The financial statements are enclosed for your review and reflect the efforts and achievements during the fiscal year.

As stated in the agreement, the college will regularly keep track of space and equipment, supplies, personnel, and other services provided to the foundation to assure that a maximum of \$200,000 in value is not exceeded in a fiscal year. Also, that the college business office will annually prepare, and the CEO of the foundation and the college president and/or their authorized designees will annually review, a post-closing summary of the transactions between the college and foundation to assure that the maximum of \$200,000 for services provided to the foundation has not been exceeded. At such time as this information is available I would be happy to discuss the financial report with you.

Another matter detailed in the agreement is the State's previous request for the foundation to transfer two Exceptional Faculty endowments from the foundation to the college. Our legal counsel has discussed this matter with the college's legal counsel and there is agreement that it's appropriate for the foundation to continue overseeing the investment of these funds. The college's legal counsel has offered to draft an agreement establishing an amendment to the current operating agreement to allow for this management. This is a positive solution allowing the funds to be invested for the long term within the framework of the amendment. We will keep you updated once the process begins.

Respectfully,

Lisa Gibert, CEO  
Clark College Foundation

Enclosure: Report of Independent Auditors and Financial Statements  
June 30, 2020 and 2019

CC: Sabra Sand, Interim Vice President of Administrative Services, Clark College  
Daniel Rogers, CFO, Clark College Foundation



# PROMISING PATHWAYS

THE CAMPAIGN for CLARK COLLEGE

February 21, 2020

Sandra A. Fowler-Hill, Interim President  
Clark College  
1933 Fort Vancouver Way  
Vancouver, WA 98663

Dear Sandra,

Per the foundation's operating agreement with the college dated December 28, 2009, the foundation represents the following items for the fiscal year ending June 30, 2019.

- 1) We have fully complied with our obligation to expend our best efforts to seek gifts, grants, donations and endowments for the benefit of the college. Contributions received for the year ended June 30, 2019 total \$8,774,000 which include cash, pledges, planned gifts and in-kind donations. Accomplishments during the year included raising funds for student scholarships (annual funds and endowment), student emergency grants, Penguin Pantry, Veteran's Resource Center, child and family studies, classified staff and employee service awards, music, English, and the tutoring center.
- 2) In circumstances where we serve as trustee or co-trustee of a committed gift, the aggregated value of benefits not meeting the Exclusive Benefit Requirement does not exceed 10% of the foundation's total assets. The actual percentage at June 30, 2019 is 0.3%. This percentage is associated with a trust of which the foundation will receive all assets, due to the trustors recent passing, except \$275,000 which will be distributed to relatives of the trustor ( $\$275,000 / \text{totals assets of } \$107,349,805 = 0.3\%$ ).
- 3) We have used all assets and earnings of the foundation for the exclusive benefit of the college or the payment of necessary and reasonable administrative expenses of the foundation. Funds totaling \$3,894,000 were expended to support student scholarships, culinary COP payments, faculty salaries/professional education, vocational programs and equipment, and other areas of college program and student support. A breakdown of the years college related expenditures are as follows:

\$1,175,000 – student scholarships  
\$849,000 – foundation staff wages/benefits in support of college programs  
\$600,000 – culinary COP payments  
\$302,000 – college affiliated staff salaries/benefits/stipends  
\$211,000 – college program support for various departments and projects  
\$170,000 – supplies, catering & meeting expenditures  
\$135,000 – foundation funds allocation (IT replacement, professional development, etc.)  
\$110,000 – professional and service provider expenditures

Clark College Foundation  
1933 Fort Vancouver Way, Vancouver, WA 98663-3598  
360.992.2301 Fax: 360.750.5759  
clarkcollegefoundation@clark.edu

[clarkcollegefoundation.org](http://clarkcollegefoundation.org)



\$60,000 – discretionary funds for campus/community relations  
\$54,000 – travel and lodging for college personnel  
\$49,000 – staff development  
\$46,000 – awards (including exceptional faculty and employee service awards)  
\$34,000 – interest payments on Boschma LLC note payable  
\$30,000 – rental fees  
\$27,000 – maintenance & repairs  
\$24,000 – advanced manufacturing consultant  
\$18,000 – scholarship management/support

Additionally, \$2,186,000 in expenditures were made towards Clark College at Boschma Farms that had no income statement impact. These expenditures impacted the balance sheet of the foundation as an increase to an asset or reduction in a liability:

\$2,082,000 – payoff of Boschma LLC note payable  
\$104,000 – legal, professional and associated land development costs

- 4) We have completed our annual audit and have received an unmodified, or clean, opinion. The financial statements are enclosed for your review and reflect the efforts and achievements during the fiscal year.

As stated in the agreement, the college will regularly keep track of space and equipment, supplies, personnel, and other services provided to the foundation to assure that a maximum of \$200,000 in value is not exceeded in a fiscal year. Also, that the college business office will annually prepare, and the CEO of the foundation and the college president and/or their authorized designees will annually review, a post-closing summary of the transactions between the college and foundation to assure that the maximum of \$200,000 for services provided to the foundation has not been exceeded. At such time as this information is available I would be happy to discuss the financial report with you.

Another matter detailed in the agreement is the State's previous request for the foundation to transfer two Exceptional Faculty endowments from the foundation to the college. Our legal counsel has discussed this matter with the college's legal counsel and there is agreement that it's appropriate for the foundation to continue overseeing the investment of these funds. An agreement will be drafted within the next few months establishing an amendment to the current operating agreement to allow for this management. This is a positive solution allowing the funds to be invested for the long term within the framework of the amendment.

Respectfully,

Lisa Gibert, CEO  
Clark College Foundation





Enclosure: Report of Independent Auditors and Financial Statements  
June 30, 2019 and 2018

CC: Bob Williamson, Vice President of Administrative Services, Clark College  
Daniel Rogers, CFO, Clark College Foundation

These questions were posed during the Board of Trustees meeting in December

### Foundation Agreement Questions

#### Page 2

There is an extra semicolon at the end of the last WHEREAS sentence.

**RESPONSE:** So noted, to be removed.

#### Page 4

I.A.6 reference to "reasonable compensation." How is this determined? Several places in the document "reasonable compensation" or "reasonable fees" is used. I would like to understand what this means in practical application. Also, see my note below under Schedule 1 regarding the possibility of a Schedule 2 for more context.

**RESPONSE:** Compensation is based on competitive market comparisons from the Portland metro marketplace. The vendor we have historically used is MLB Group in Portland. Their website link is: <http://www.mblgroup.com/> The foundation performs a full salary survey every few years and then adjusts the findings in between based on regional inflationary data. We also do our own review of similar nonprofits and foundations, since many nonprofit organizations are not comparable to an endowment related foundation. Currently, the foundation salaries are low compared to other higher education foundation nonprofit corporations. The demand for fundraising personnel in the advancement and development field is extremely high. Obtaining talent has proven to be challenging with many of our colleagues and national higher education fundraising organizations posting large numbers of unfilled postings.

I(B)(4). There appears to be a typographic error in line 3. I believe it should reference "II.E" not "III.E"

**RESPONSE:** So noted, to be changed.

#### Page 5

II.D line 5 reference to reasonable expenses. How is this determined? As previously noted.

**RESPONSE:** Just as with the college, the largest single operational expense for the foundation is salaries and benefits. The annual operating budget for the foundation is approximately \$2.8M. The overall budget elements have changed over the years with non-salary operating budget in advancement decreasing nearly 50% since the beginning of the campaign so that dollars could focus on hiring experienced staff. Salary and wages are determined as noted above and go through a thorough analysis by the executive committee annually upon approval of the budget. All other expenditures (fundraising, management and general, programming) are determined based on the underlying objectives and strategic initiatives undertaken by the foundation. These costs are balanced against the other objectives within the foundation, while considering any assistance provided by the college in the terms of in-kind support. The two primary areas of support have been around communications/marketing and IT Services. Although I have not received data to determine the value of such support, it has been viewed to fall under the "up to \$200K in annual support criteria" as noted in previous operating agreements.

That said, it is important that when looking at the foundation's financial statements, the operating budget represents expenditures that are under our management and control, where other expenditures are not. Those other expenses include amounts that are determined through the scholarship awarding process or expenses paid out of foundation housed funds that are directed by the underlying college program.

II.D line 8. Why are I.A.9 funds excluded? There are two carve outs for I.A.9 funds. (here and on page 6). I understand that sources (names) remain confidential, but why would aggregate amounts of funds in each of the categories (completed gifts, committed gifts, and expectancy gifts) not be reported? Is there a business need for the college to have this information? Is there a business need for the foundation to exclude this information?

**RESPONSE:** I.A.9 funds represent funds received (or otherwise acknowledged and reported to us) for funds that are managed by the foundation (as a trustee) or through an outside source that will eventually come to the foundation that have "split interests." These funds were acknowledged in the last accepted version of the articles of incorporation that have elements that do not meet the "exclusive benefit clause." For example, when a charitable planned gift is created, there are times when the donor may determine to benefit not only the foundation, but also themselves (during their lifespan) or another charity which will receive a portion of the proceeds. These types of arrangements are not common, but they provide the foundation the opportunity to manage funds from which the foundation will eventually be part benefactor. To protect both the college and the foundation, parameters for these types of arrangements have been determined and are exhibited in an annual compliance letter. Attached, you will find examples of that letter from both FY 19 and FY 20.

II.E line 4 does the college receive anything from the foundation beyond III.I Investment Services? As previously noted.

**RESPONSE:** The foundation provides several services to the college. The investment services utilized for the endowment are perhaps the most notable and widely understood. In addition to those services, the foundation manages a scholarship program, which has grown from a very meager beginning to providing more than \$1.2M in annual awards to hundreds of students. This program requires a full-time employee to monitor and manage it; work with the underlying donors; and to communicate with and support students seeking financial assistance. The program requires continual coordination between the foundation and the college, and relies heavily on information provided through the data sharing agreement. Given the stress currently placed on public financial funding, this foundation run scholarship program is vitally important to maintaining a financially solvent student aid program. This program then helps the foundation demonstrate satisfaction of the fiduciary responsibilities generally required from potential donors.

The foundation also performs fundraising and community outreach (alumni and other) services to the college. These programs provide both financial and relational benefits. Having personnel from both the college and the foundation being a regular part of the fabric of our community helps in building support when critical collaboration is sought.

The foundation has regularly played a key role in obtaining funding for college programming, faculty/staff development, scholarships, capital expansion, etc. Notable projects within the past 23 years have included the Oliva Early Learning Center, the remodel of the Firstenburg Family Dental Hygiene Education and Care Center, the purchase of the "triangle property" that currently houses STEM,

the T Building, and the foundation offices. Other purchases have included the land at Columbia Tech Center and the most recent addition of 70 acres in Ridgefield for the new campus at Boschma Farms. This work supports the educational goals and objectives of Clark College because the priorities to pursue these endeavors were established under the strategic initiatives determined by Clark.

The support the advancement program has given to the college over the last number of years has also been significant. The college had acknowledged numerous times in meetings, that it was not in a position to be able to do a number of things that the foundation was doing to promote the college in the eyes of the community, and that they were appreciative. These things have included over the years:

- On-going support of the college's programs and projects in our magazine, podcast series, electronic newsletter, social media, etc.
- Winter 2020 edition of Partners dedicated primarily to introduction of new president, including the cover story
- Presidential Conversations program which introduced president to key community peers over the course of the first year of the president's tenure. More than 100 constituents introduced to Dr. Edwards in small group, face-to-face virtual interactions
- Stepped in to reshoot, edit and produce the President's 2021 State of the College video address after an employee error resulted in the postponement the original broadcast. CCF did this at no cost to college.

#### **Page 6**

II.F line 3. Why are I.A.9 funds excluded? As previously noted above.

**RESPONSE:** Please see response to related question II.D line 8, above.

#### **Page 7**

III.I line 6. How are administrative fees determined? as previously noted

**RESPONSE:** Administrative fees are determined based on comparable institutional data, detailed financial analysis and existing funding available for operational sustainability. The fees assessed are traditional in endowment and foundation management. In comparing fees, it is important to recognize that foundations are structured very differently, and many receive substantial monetary support from their educational institution directly to meet foundation operating needs, rather than through a fee for service financial model. Some institutions apply both methodologies. This topic was reviewed in detail at the foundation's retreat in the summer of 2019.

To be financially sustainable, the foundation either has to earn operating support through other enterprising operations or rely on the fee assessments as charged upon the contributions received. Some have represented that our fees have been assessed at over 30%. This is not a true statement - at no time has an unrestricted dollar been charged an amount outside of the policy as noted on the website. Currently, the fee structure is tiered with major gifts (\$10,000 or above at 5%) and all other monetary gifts up to \$9,999 at 10%. As a result, any restricted donation will have a minimum of 90% of the donation going toward its contributed purpose. Since the revised fee structure was implemented more than three years ago, we have not received significant level of concern from donors. Donors are made fully aware of fee structures. The fee structure is on CCF's website, and all solicitations announce

the fees to be assessed in gift agreements. Fee structures are also articulated in the annual endowment reports.

It is possible, the 30% reference may have been confused with another benchmarking tool that we monitor which calculates the foundation's cost to raise a dollar. This figure is not an actual "cost" or "fee" taken from any contribution. Instead, it is a statistic to compare our annual expenses to the amounts actually contributed, donated or promised to the foundation. We use this statistic to monitor the effectiveness of our advancement program from year to another. It is a volatile measurement as it can swing widely from one year to the next. The Foundation has a fairly stable level of expenses, but in any given year, donors may be exceptionally generous or not, based on the volatility of the economy, politics, tax code changes, and a variety of other factors outside of the control of the foundation. Large transformational gifts tend to send this annual cost to 20 cents or lower depending on the significance of the gift obtained. Ultimately, it is a productivity tool to watch should a trend over time require further analysis or management action.

### **Schedule 1**

Since the Foundation moved to their own servers has the college continued to provide support for those servers? Not being in the details, I had assumed that when servers went to the foundation, they also would be responsible for operating and maintaining those servers, but this may not be correct? (Val answered this question at the workshop). Is the college reimbursed for those items on schedule 1 at these "not to exceed levels" or is this in consideration of other services coming from the foundation to the college? In the later, do we need a schedule 2 that describes the flow of offsetting services from the foundation to the college?

**RESPONSE:** See attached compliance letters from FY 19 and 20. For value associated with college services, the foundation has not been given these calculations for several years.

### **Gift Acceptance Policy**

Page 11

VII.B indicates 5% fee on all donations. The web site indicates 5% for > \$10K and 10% for < \$10K. Just seeking clarity on this one.

**RESPONSE:** Noted, gift acceptance policy is dated 2009 and is currently being updated.

VIII. Does the Foundation have a policy related to acceptance of crypto currency or non-fungible tokens? Would like to understand if the Foundation is accepting some of these emerging asset classes on behalf of the college.

**RESPONSE:** At the moment, the foundation does not have a crypto or non-fungible token policy. Crypto currency or non-fungible tokens are fairly new asset classes in the world of higher education philanthropy. Universities have had some experience in this depending upon the institution involved. During the recent rewrite of the CASE Global Reporting Standards, these digital currencies were added and assessed for "counting" under campaign reporting. Although a gift of digital currency is not foreseen in the near future, the foundation will add the best standards criteria of evaluating this asset

for acceptance. These irregular types of asset support require specific due diligence in their acceptance which are then brought to the executive committee for board level approval.

Page 19

C. What is the Naming Policy and Philanthropic Naming Criteria? Given contemporary sensibilities around naming I would like to understand what the policy and criteria are.

**RESPONSE:** The naming policy and philanthropic naming criteria are both housed within the college's administrative policy manual section 700. The policy has been utilized a limited number of times over the last several years. The college and the foundation have generally agreed to work collaboratively at the onset of a project (by determining the areas that can be used for a philanthropic naming) and once a donor has been identified. Many of these specific donor related namings have historically occurred directly with the college president when a donor solicitation or agreement was being drafted and signed.