

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
CALIFORNIA STATE UNIVERSITY, EAST BAY  
AND  
CAL STATE EAST BAY EDUCATIONAL FOUNDATION**

This Memorandum of Understanding (“MOU”) is made and entered into and between California State University East Bay (“University”) and Cal State East Bay Educational Foundation (“Foundation”). The term of this agreement shall be from November 19, 2017 to November 18, 2027 unless sooner terminated as herein provided.

**I. Purpose**

The purpose of this Memorandum of Understanding is to set forth the terms and conditions under which the Foundation may reimburse University for expenditures incurred by University as a result of the Foundation’s activities under the terms of the Master Operating Agreement signed on November 20, 2017 between the University, Foundation and Trustees of the California State University (CSU.)

**II. Services and Facilities**

Foundation, having no employees, wishes to outsource business functions/services to the University. The functions/business services requiring outsourcing are detailed in attachment A.

**III. Independent Contractor Relationship**

Foundation acknowledges that University is, and shall be, in the performance of all work services and activities under this MOU, and Independent Contractor, and not an employee, agent, or servant of the Foundation. All persons engaged in any of the work or services performed pursuant to this MOU shall at all times, and in all places, be subject to the University’s sole direction, supervision and control. The University shall exercise control over the means and the manner in which it and its employees perform the work, and in all respects the University’s relationship and the relationship of its employees to the Foundation shall be that of an Independent Contractor and not as employees or agents of the Foundation.

The University does not have the power or authority to bind the Foundation in any promise, agreement, or representation other than specifically provided for in this agreement.

#### **IV. Fees**

In consideration of the mutual promises contained herein, Foundation agrees to pay University reimbursement fees based on the University's Cost Allocation Model used for auxiliaries and self-support entities. University agrees to review with Foundation the assumptions, input and output of the Cost Allocation Model on an annual basis, and to review any changes to the model if it has cost implications for Foundation.

#### **IV. Invoices and Payments**

- A. The total cost of the business services to be provide by University to the Foundation under this MOU for the period from July 1, 2017 to June 20, 2018 was provided by the University Budget Director to the Foundation Treasurer on or before June 30, 2017. For each subsequent year thereafter University shall provide Foundation with the total cost of the business services for the coming fiscal year by June 1.
- B. University will submit on a quarterly basis an invoice to the Foundation for one quarter of the total cost for the then current fiscal year. Invoices received from the University pursuant to this Agreement will be reviewed, approved and processed for payment by the Foundation within thirty (30) days following receipt.
- C. Final Invoice: In order for both parties herein to close their books and records, the University will clearly state "final invoice" on the University's final/last billing to the Foundation. This certifies that all services have been properly performed and all charges and costs have been invoiced to the Foundation.

#### **V. Indemnification**

University shall indemnify and save harmless and defend Foundation, its agents, servants, and employees from and against any and all claims, liability, losses, and/or cause of action which may arise from any negligent act or omission of University, its agents, servants or employees in the performance of services under this Agreement. Foundation shall indemnify and save harmless and defend University its agents, servants, and employees from and against any and all claims, liability, losses, and/or cause of action which may arise from any negligent act or omission of Foundation, its agents, servants or employees in the performance of services under this Agreement.

#### **VI. Successors and Assigns**

University and Foundation each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither University nor Foundation shall assign, sublet convey, or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of Foundation which

may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than University and Foundation.

#### **VII. Remedies**

This Agreement shall be governed by the laws of the State of California. Any and all legal action necessary to enforce the Agreement will be held in Alameda County and the Agreement will be interpreted according to the laws of California. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

#### **VIII. Severability**

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

#### **IX. Amendment Clause**

This Agreement may not be amended, changed, modified, or altered without the written consent of the University and Foundation.

#### **X. Notices**

All notices required in this Agreement shall be hand delivered or if sent to Foundation shall be mailed interoffice to:

Debbie Chaw  
Treasurer  
Cal State East Bay Educational Foundation  
SA4400

And if sent to University shall be mailed interoffice to:

Jon Medwin  
Director of Procurement & Support Services  
SA2751

IN WITNESS OF WHEREOF, the President of Cal State East Bay Educational Foundation, has made and executed this Contract on behalf of Foundation and University has hereunto set its hand the day and year written below.

UNIVERSITY:

By: Jon Medwin 11/20/2017  
Jon Medwin Date  
Director of Procurement & Support Services

FOUNDATION:

By: William Johnson 11/20/17  
William Johnson Date  
President

CAL STATE EAST BAY EDUCATIONAL FOUNDATION  
Functions/Business Services Requiring Outsourcing

1. Banking, treasury and cash management
  - a. Oversight of investments for appropriate accounts
  - b. Monitoring and approving expenditures
  - c. Monitoring cash flow
2. Financial Management including accounting and reporting
3. Budgeting
4. Accounts Payable
5. Monitoring for compliance
6. Taxation
7. Board and committee support
  - a. Board reports (budget and financial reports)
  - b. Implementation of board approved policies and actions
8. Investment Management
  - a. Monitor and account for investments
    - i. Restricted: endowment and other gift account management
      1. Investment of pure endowments, quasi endowments and term endowments
        - a. Endowment management
          - i. Compliance with endowment agreements
          - ii. Endowment reserves
        2. Monitoring and accounting for earnings
        3. Reporting to account holders and University Advancement
        4. Administering accounts in accordance with gift agreements, CSU, CSUEB, and Cal State East Bay Educational Foundation policies and procedures
      - ii. Restricted: non-endowment gift bearing accounts
    - b. Liaison with Investment Manager (in partnership with Cal State East Bay Educational Foundation Treasurer)
9. Procurement and Support Services

