

**MEMORANDUM OF UNDERSTANDING BETWEEN  
UNIVERSITY OF MARY WASHINGTON AND  
UNIVERSITY OF MARY WASHINGTON FOUNDATION**

This MEMORANDUM OF UNDERSTANDING (this "Agreement"), dated this 1<sup>st</sup> day of July, 2024 (the "Effective Date"), is made between UNIVERSITY OF MARY WASHINGTON (the "University") and UNIVERSITY OF MARY WASHINGTON FOUNDATION (the "Foundation").

WHEREAS, the Foundation was organized and incorporated on February 26, 1975 as a Virginia nonstock corporation and an organization described in Internal Revenue Code section 501(c)(3) and is classified as a publicly supported organization under Internal Revenue Code sections 509(a)(1) and 170(b)(1)(A)(iv) and must abide by both federal and Virginia laws and regulations applicable to such types of entities; and

WHEREAS, the Foundation was created for the sole purpose of advancing and furthering the aims and purposes of the University, and is a private corporation organized and operated to receive, manage, invest, and administer private gifts and property, and to make expenditures to or for the benefit of the University; and

WHEREAS, the Foundation supports the University by receiving, managing, investing, and administering private gifts and resources, including endowments, real and intangible property, and funds held for others, and stewards and disburses funds in accordance with donor intent and its fiduciary responsibilities. In addition to and through this important role, the Foundation also supports fundraising and alumni engagement in a manner that supports and furthers the philanthropic goals of the University; and

WHEREAS, the Foundation, primarily through the fundraising efforts of the University, is dedicated to assisting the University in building an endowment to support the

University and in addressing through financial support the long-term academic mission and other priorities of the University; and

WHEREAS, in connection with carrying out its activities and operations in furtherance of its purpose, the Foundation retains personnel experienced in managing and investing private contributions, endowment, and other assets; and

WHEREAS, in connection with and in support of its activities, the Foundation pays a portion or the entirety of the salary of University employees who serve in dual-hatted roles supporting the work of the Foundation. Such employees supporting the Foundation will advise and assist in planning for and managing private contributions for the benefit and support of the University; and

WHEREAS, the University is a state agency and institution of higher education of the Commonwealth of Virginia organized for the purpose of providing higher education for students and is governed by a Board of Visitors (the "BOV"), which delegates authority as appropriate to the President of the University (the "President"), and the BOV's membership, authority, and duties are prescribed by its Charter of 1908 and subsequent legislation of the Commonwealth; and

WHEREAS, the University and the Foundation desire to set forth the basic terms of their operating relationship and clearly state the support and the manner of support that each separate legal entity will provide to the other;

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

**1. Term, Termination, Dissolution, and Amendments.**

(a) Except as otherwise provided below, the term of this Agreement shall commence on the date first written above and end on June 30, 2029, unless sooner terminated pursuant to the terms of this Agreement (the "Term").

(b) The Term shall automatically renew on July 1 of each year beginning in 2029, for a period of two (2) years, unless either party gives written notice of termination to the other on or before March 1 of the second year of the then current Term, and if such notice is given this Agreement will terminate on June 30 of that second year.

(c) Either party may, upon 90 days prior written notice to the other, terminate this Agreement without cause. Notwithstanding anything to the contrary under this Agreement, in no event shall the Foundation terminate this Agreement without cause unless and until the Foundation has transferred all endowment funds in its possession to the University or an entity designated by the University.

(d) Either party may terminate this Agreement for cause in the event the other party defaults in the performance of its obligations and fails to cure the default within ninety (90) days (or is diligently pursuing a cure and additional time is reasonable) after receiving written notice of such default.

(e) Consistent with the Foundation's Articles of Incorporation, as amended and restated, and donor intent, should the Foundation cease to exist or cease to be an organization described in Internal Revenue Code section 501(c)(3) and is unable to reasonably cure the same, the Foundation will transfer its assets and property to or among (i) the University or (ii) any one or more foundations affiliated with the University that are organized and operated exclusively for charitable and educational purposes within the

meaning of Internal Revenue Code section 501(c)(3) and 170(c)(2)(B). If none of the University or any of its affiliated foundations exist, or in the case of the affiliated foundations, are then so described, the Foundation will distribute its assets and property to one or more organizations that are organized and operated exclusively for charitable and educational purposes within the meaning of Internal Revenue Code sections 501(c)(3) and 170(c)(2)(B). The Foundation agrees to transfer such assets and property in a manner that furthers the best interests of the University, as determined in consultation with the University. Following any such transfer, this Agreement shall terminate.

(f) This Agreement may be amended only upon the written agreement of the University and the Foundation.

## **2. Background of the Parties**

(a) Pursuant to Section 23.1-1301 of the Code of Virginia, the Board of Visitors of the University is vested with the authority to manage the funds of the University, make regulations and policies concerning the University, appoint the President of the University, appoint all professors of the University and fix their salaries, and generally direct the affairs of the University.

(b) The Foundation is a separately incorporated Virginia nonstock corporation and is an organization described in Internal Revenue Code section 501(c)(3) and was created to manage, invest, and distribute private resources to advance and further the mission and purposes of the University.

(c) The Foundation's Board of Trustees is responsible for: (i) the control and management of all assets of the Foundation, including the prudent management of all gifts and endowment funds, real estate, and other investment assets in a manner consistent with written donor intent and any applicable law, and (ii) the performance and oversight of all

aspects of its operations based on a comprehensive set of bylaws and policies adopted by the Foundation's Board of Trustees that address the Board of Trustees' fiduciary responsibilities, including expectations of individual Trustees based upon ethical guidelines and policies.

### **3. Responsibilities of the University to the Foundation**

(a) The President of the University, or their designee, shall be responsible for communicating to the Foundation the University's priorities and strategic and long-term plans, as approved by the University's Board of Visitors. The Foundation agrees that the President, or their designee, shall be provided an opportunity to share such communications with the Foundation's Board of Trustees at all regular meetings of the Foundation's Board of Trustees.

(b) The University recognizes that the Foundation is a private corporation with the authority and obligations to keep its records and data confidential and private, to the extent required by a donor or the requirements of any applicable law.

(c) Consistent with its Articles of Incorporation, Bylaws, and any applicable policies, as amended from time to time, the Foundation agrees that the Rector of the Board of Visitors, or their designee, and the President of the University, or their designee, shall each serve as an *ex officio* Trustee of the Foundation and shall have full voting rights. Notwithstanding the foregoing and with the approval of the President of the University, the Foundation may also designate in its Articles of Incorporation or Bylaws other University officers or senior officials as *ex officio* Trustees, including without limitation the University's Chief Financial Officer and the University's Vice President for Advancement. To the extent that either of those individuals serve in a dual-hatted role they will be non-voting members of the Foundation Board of Trustees.

(d) If and to the extent the parties agree, the Foundation may provide services to

the University for which the University will pay fair and reasonable compensation, which may be paid in cash or in kind as otherwise agreed to by the parties.

(e) The Foundation and the University shall enter into a separately negotiated Service Level Agreement ("SLA") that outlines office space provided to the Foundation by the University and used by the Foundation to support the activities of the Foundation as set forth herein. Any such Service Level Agreement shall include provisions requiring the Foundation's payment of costs of telephone service, information technology service, and other necessary services for the office operations of the Foundation so provided by the University, if any (or such items may be set forth in a separate agreement between the Foundation and the University if no office space is provided by the University to the Foundation). In addition, the SLA will outline other services including staffing provided by the University to the Foundation. The Foundation will pay to the University fair and reasonable compensation (which may be paid in cash or in-kind as agreed to by the parties) for such services.

(f) The University hereby grants to the Foundation, consistent with the Foundation's purpose of furthering the aims and purposes of the University, royalty-free, a non-exclusive and non-transferable right and license to use the University's name and symbols adjacent to, or in connection with, the Foundation's name. The Foundation agrees to use the University's name and symbols only in an appropriate manner that is consistent with current University practices, and, if any questions arise about the propriety of the Foundation's use of the University's name or symbols, the Foundation will seek the guidance of the University's President or their designee. All goodwill associated with such usage shall inure to the benefit of the University. The Foundation shall not have the right to further sublicense these rights to other entities without the University's written agreement.

(g) The University and the Foundation agree to coordinate their approach to engagement and fundraising, data and information sharing, and other fundraising activities.

(h) The University, on behalf of the Foundation and University, shall promptly process, acknowledge, and issue receipts for all gifts to it in accordance with federal tax laws.

#### **4. Responsibilities of the Foundation to the University**

(a) The University agrees that the Executive Director of the Foundation, or their designee, shall be provided an opportunity to share the Foundation updates as approved by the Foundation's Board of Trustees, with the University's Board of Visitors.

(b) As its highest priority, the Foundation will supplement the salary and benefits of the University President by providing the University with funds sufficient to cover the difference between the salary designated in the University's employment agreement with the President and the amount specified in the Commonwealth's Appropriation Act, provided that the University, on an annual basis, provides advance notice to, and consults with the Foundation regarding the proposed supplement.

##### **(c) Infrastructure Support for University Advancement**

i. The University understands and acknowledges that the Foundation shall create an environment conducive to generating private support for its purpose of furthering the mission and priorities of the University.

ii. In addition to the Foundation's authority to provide funds in support of the University's activities and operations generally, the Foundation, in furtherance of its purpose to advance the mission and purposes of the University, may provide funds to supplement the budget of the University's Advancement and Alumni Engagement operations and campaign initiatives or for other purposes consistent with

this Agreement.

iii. The Foundation shall comply with the University's established Gift Acceptance Policy (UMW Policy G.2.3) and Naming Policy (UMW Policy G.2.2). The University shall establish and enforce such policy. The University shall accept and utilize funds from donors in accordance with the University's Gift Acceptance Policy and Naming Policy and the requirements of applicable law.

iv. The Foundation recognizes that the University bears the primary responsibility for fundraising, and, if requested by the University and approved by the Foundation's Board of Trustees, the Foundation agrees to assist the University with fundraising initiatives, including aiding in the full cycle of qualification, cultivation, solicitation, and stewardship.

v. The Foundation shall not accept grants from federal agencies, except in special circumstances that are approved in writing by the University, the Foundation's Chairman or Executive Trustee, and the applicable governmental agency.

vi. The Foundation shall establish and enforce policies to protect donor confidentiality and privacy generally and in accordance with donor intent and the requirements of applicable law. The University shall accept and use funds from donors in accordance with University policy and the requirements of applicable law.

(d) **Asset Management**

i. The Foundation shall adhere to applicable federal and state laws including the Uniform Prudent Management of institutional Funds Act (UPMIFA) and, to the extent applicable, the Uniform Prudent Investor Act (UPIA).

ii. The Foundation agrees that it shall engage an independent certified public accountant annually to conduct an audit of the Foundation's financial and operational



records and will provide the University with a copy of the annual audited financial statements, including management letters and management's response thereto within 30 days of receipt but no later than March 1 following the end of the fiscal year for which the audit is being prepared and its annual Form 990 and other federal and state tax filings within 30 days of filing with the Internal Revenue Service or applicable state taxing authorities.

iii. To the extent required under state laws applicable to the University, the Foundation shall work with the University to ensure that the University can correctly report Foundation resources and activities as may be required for the financial statements of the University.

iv. The Foundation agrees that it shall continue to invest and manage such University endowment funds that the University chooses to place with the Foundation through the use of a highly qualified outside investment and advisory firm, referred to as an Outsourced Chief Investment Officer (OCIO) in accordance with the standards set forth in this Agreement.

v. The Foundation, as approved by the Foundation's Board of Trustees, shall establish a statement of investment policy ("SIP") for the purposes of governing the investment management and oversight of the University's privately donated cash and investments, all in accordance with the Uniform Prudent Management of Institutional Funds Act. The Foundation agrees that the President of the University (or their designee) shall at all times be a member of the Foundation's Investment Committee.

**(e) Institutional Flexibility**

When distributing gifts or funds to the University, the Foundation shall disclose any terms, conditions, or limitations imposed by the donor or applicable law on the use of the gift or funds. The University shall abide by such restrictions and provide

appropriate documentation of such use to the Foundation.

**(f) Transfer of Funds**

i. The Foundation accepts and manages private gifts and disburses funds for the benefit of the University and for the benefit of designated departments or programs within the University or entities affiliated with the University, in compliance with applicable laws, University and Foundation policies, and donor intent as set forth in applicable gift instruments.

ii. The Foundation's disbursements to or for the benefit of the University must be for reasonable expenses that support a University purpose or program, consistent with donor intent as expressed in an applicable gift instrument, and not in conflict with any applicable law, including federal tax laws applicable to the Foundation.

iii. The Foundation may designate a portion of its unrestricted funds for use by or for the University administration in carrying out the purposes of the University, which uses may include leadership compensation, in accordance with applicable policies of the Foundation and the University.

**(g) Services**

To the extent the University provides any services to the Foundation, the Foundation shall pay the University fair and reasonable compensation for such services as agreed to by the parties, and which may be paid in cash or in kind as otherwise agreed to by the parties.

**5. Foundation Funding and Administration**

(a) The Foundation shall be responsible for establishing a budget for the cost of its programs, operations, and services. The Foundation agrees that it will develop a draft budget for the next fiscal year and shall share such draft budget with the University no later

than ninety (90) days before the end of the prior fiscal year to enable the University to prepare adequate and complete budgets based upon projected funding from the Foundation.

(b) Subject to the later provisions of this subsection, the Foundation may use a reasonable percentage of the annual unrestricted funds, assess fees for services, or assess fees on gifts and endowed funds, and other investments. The use of fees and assessments will be decided in consultation with University administrators, applied uniformly, and disclosed to donors. To the extent that the Foundation's budget relies upon the expenditure of unrestricted funds raised by the University for the Foundation or involves fees for services or administrative fees on endowment or gift funds, the Foundation shall consult with the University in advance and make determinations on such amounts that are consistent with donor intent or written agreements with donors and minimize the impact on the ability of the University to raise funds.

(c) The Foundation shall maintain, at its own expense, copies of the plans, budgets, donor and alumni records, and gift instruments and related documents developed in connection with the performance of its responsibilities, purposes, and obligations.

(d) The University recognizes that the Foundation is a private corporation with the authority and obligations to keep its records and data confidential and private, to the extent required by a donor or the requirements of any applicable law. Subject to applicable confidentiality requirements, the Foundation agrees that it will voluntarily provide access to the following information to the University's President or their designee:

i. Copies of any amendments to or restatements of the Foundation's Articles of Incorporation or Bylaws;

- ii. Written notice of any litigation or threat of litigation against the Foundation or its affiliate(s), or its Trustees or officers in such capacities;
- iii. Prompt written notice of any audit or review by any federal or state taxing authorities or action taken or threatened by any such authority that would adversely affect the tax-exempt status of the Foundation;
- iv. Prior written notice of the acquisition of any real property (including indirect acquisition through a limited liability company or other entity) or the incurrence of any indebtedness in excess of Fifty Thousand Dollars (\$50,000.00) (including any capital or operating leases) or the modification or extension of any existing such indebtedness (and the Foundation agrees that it shall coordinate its efforts with those of the University);
- v. A list of all private firms responsible for managing or investing the assets of the Foundation or any affiliate of the Foundation; and
- vi. Written notice of any proposed major capital expenditures to be made in the name of or for the benefit of the University.

## **6. General Terms.**

(a) The University's officers and Board of Visitors and the Foundation's officers and Board of Trustees shall set a schedule each fiscal year of periodic and coordinated meetings to foster and maintain productive relationships and ensure open and continuing communications and alignment of priorities.

(b) Nothing herein shall be deemed to prevent the University from entering into agreements with other entities or related foundations with obligations and purposes similar to those specified in this Agreement, except and to the extent that such agreements shall not adversely affect the operations of the Foundation.

(c) Before acceptance of gifts of real property, the Foundation, as part of its required and appropriate due diligence, will include a review and approval of any conditions

and restrictions under policies and procedures developed by the Foundation and the University. The Foundation may choose to accept or reject any gift of real property based on such due diligence and any conditions or restrictions imposed by the donor and not deemed to be in the best interests of the Foundation or the University. If the Foundation or the University anticipates use of the gift of real property for University business or activities, the Foundation shall obtain the University's approval of such use before accepting such gift based solely on such intended use.

(d) Gift agreements that commit the University or the Foundation in any way must be approved by the Foundation and the University to the extent required under policies and procedures adopted by the Foundation and the University. The Foundation acknowledges that the University may choose to reject such gifts, and the University acknowledges that the Foundation may choose to reject such gifts, due to the terms of any conditions or restrictions imposed by the donor or whether such donation would be cost prohibitive for the Foundation to manage and maintain.

(e) The Foundation agrees that it shall submit to the University for approval any new business venture outside the normal function of the Foundation and a significant change from the Foundation's current business activities. In addition, the Foundation agrees not to undertake and change the purpose or scope of its activities that is substantial in nature without prior approval from the University. The University shall review and, if such activity or change is approved, provide written confirmation of such approval within an appropriate period of time to be determined by agreement of the University and the Foundation.

(f) The University and the Foundation acknowledge that each is an independent entity and agree neither will be liable, nor will be held out by the other as

liable, for any of the other's contracts, torts, or other acts or omissions, or those of the other's Trustees, Visitors, officers, staff, or other agents. The Foundation further acknowledges that the Commonwealth of Virginia will not be liable for any of the Foundation's contracts, torts, or other acts or omissions.

(g) All correspondence, solicitations, activities, and advertisements concerning the Foundation shall reflect the Foundation, the University, and the relationship between them appropriately.

(h) Officers and staff members of the Foundation shall be bonded, as appropriate, in amounts to be determined by the Foundation's Board of Trustees. The Foundation shall obtain and maintain general liability insurance and Trustees' and Officers' liability insurance in amounts determined by the Foundation's Board of Trustees to be reasonable and appropriate. The Commonwealth of Virginia and the University have not provided, and shall have no obligation to provide, insurance coverage of any type for the Foundation or its Trustees, officers, staff, or agents. The Commonwealth of Virginia and the University shall have no obligation to provide any legal defense for the Foundation, or its Trustees, officers, staff, or agents in the event of any claim against them.

(i) The Foundation agrees that business transactions involving the Foundation and the personal or business affairs of a Trustee, officer, or other staff member of the Foundation shall be approved in advance by the Foundation's Board of Trustees, in accordance with the Foundation's Bylaws, applicable conflict of interest policy ("COI Policy"), and applicable law. In addition, Trustees, officers, and staff members of the Foundation shall disqualify themselves from making, participating in, or in any way

attempting to use their official positions to influence a decision in which they have or would have a financial interest, and the Foundation agrees to maintain and enforce its COI Policy to that effect.

(j) The Foundation agrees that it shall maintain and enforce a policy, which may be the COI Policy, that no Trustee, officer, or staff member of the Foundation shall accept, from any source, any gift or gratuity that is offered, or reasonably appears to be offered, because of the position held with the Foundation by the individual, nor shall an offer or gratuity be extended by such an individual on a similar basis. This provision shall not, however, apply to gifts offered to or by the Foundation as an entity.

(k) The Foundation, twice annually and upon request, will provide the University with information related to funds it has expended by payments directly to the University or by payments made on behalf of the University to support programs and activities undertaken by the University or its faculty and staff.

(l) No provision of this Agreement shall be deemed to create a partnership or joint venture, or agency between the University and the Foundation. The parties agree that the Commonwealth of Virginia and the University are not liable, and will not be held out by the Foundation as being liable, for any of the Foundation's contracts, torts, or other acts or omissions of its Trustees, officers, or staff absent specific University agreement, and nor shall the Commonwealth of the University be obligated to defend the Foundation against legal action.

(m) Any notices or other communications required or permitted to be sent under this Agreement, including any written approvals, may be sent by overnight mail, postage prepaid, to the address below or such other method, including electronic mail, as a party may specify in writing:

To the Foundation:  
Katie Turcotte  
University of Mary Washington Foundation  
1119 Hanover Street  
Fredericksburg, Virginia 22401 Attention:  
Foundation Executive Director

With a copy to:  
Charles W. Payne  
Hirschler  
725 Jackson Street, Suite 200  
Fredericksburg, Virginia 22401-5720

To the University:  
Troy D. Paino  
University of Mary Washington  
1301 College Avenue  
Fredericksburg, Virginia 22401  
Attention: President

With a copy to:  
Sandra Gregor  
University of Mary Washington  
1301 College Avenue  
Fredericksburg, VA 22401  
Attention: University Counsel

(n) The parties agree that this Agreement supersedes any prior agreements related to the subject matter hereof; including the Memorandum of Understanding between the parties dated December 17, 2021.

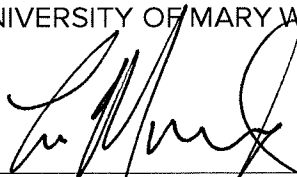
(m) This Agreement shall be governed by the laws of the Commonwealth of Virginia.



IN WITNESS WHEREOF, the parties have caused this Agreement to be  
executed by their duly authorized officers as of the day and date first above written.

UNIVERSITY OF MARY WASHINGTON

By



W. LEE MURRAY, Rector

UNIVERSITY OF MARY WASHINGTON  
FOUNDATION

By



Anne M. Steen '83, Chairman

