

Testimony
to the
Government Finance Committee
March 13, 2014

Chairman Delzer and members of the Committee, I am Murray G. Sagsveen, Chief of Staff for the North Dakota University System. I will focus on the State Board of Higher Education Policy 340.2 concerning institution foundations and key foundation-related issues.

The State Board of Higher Education recognizes that foundations significantly assist all institutions by supporting capital projects, providing matching funds for programs such as the challenge grants established in 2013, funding scholarships for students, and maintaining relationships with alumni. Also, foundations at NDSU and UND support the unique research programs at those institutions.

SBHE Policy 340.2

At the same time, the State Board of Higher Education recognizes that the institution-foundation relationship should be governed by reasonable guidelines. Accordingly, the Board adopted and has periodically updated the enclosed Policy 340.2.

The policy requires that “each institution and its foundation(s) shall negotiate and maintain a written operating agreement” that includes at least:

- A description of the services and benefits each organization provides to the other.
- A description of reporting relationships if the organizations share employees.
- A description of any government functions delegated to the foundation.
- A process to ensure the foundation will solicit input from the institution before defining the priorities of the foundation.
- The foundation’s minimum accounting requirements.
- An explanation of how gifts, grants, donations, and endowments are accepted and accounted for, including circumstances under which institution approval is required.
- Terms and conditions of any joint fundraising efforts and fundraising for institution capital projects.
- Protection of confidential information.
- Policies governing a foundation’s management or use of an institution’s intellectual property.
- Provisions that address conflicts of interest.

Foundations and institutions are required to annually review such agreements and update as necessary.

Currently, there are 21 institution-foundation agreements:

- BSC – Bismarck State College Foundation, <http://www.bismarckstate.edu/foundation/>
- DCB – Dakota College at Bottineau Foundation, <http://www.dakotacollege.edu/foundation.php>
- DSU – Dickinson State University Foundation, <http://dsufamily.com/s/1164/start.aspx>
- LRSC – Lake Region State College Foundation, <http://www.lrsc.edu/giving-to-lrsc>
- MaSU – Mayville State University Foundation, <http://www.mayvillestate.edu/alumni-friends/msu-foundation/>
- MiSU – Minot State University Foundation, <http://www.minotstateu.edu/alumni/foundation.shtml>
- NDSCS – North Dakota State College of Science Foundation, <http://www.ndscsalumni.com/>
- NDSU –
 - North Dakota State University Research and Technology Park, <http://www.ndsuresearchpark.com/Pages/default.aspx>
 - North Dakota State University Development Foundation, <http://www.ndsufoundation.com/>
 - North Dakota State University Alumni Association, <http://ndsualumni.com/>
 - North Dakota State University Team Makers Club – Development Foundation, <http://gobison.com/sports/2013/4/19/teammakers.aspx?tab=aboutteammakers>
 - North Dakota State University Research Foundation, <http://ndsuresearchfoundation.org/index.aspx>
- UND –
 - University of North Dakota Energy & Environmental Research Center, <http://www.undeerc.org/>
 - University of North Dakota Aerospace Foundation, <http://www.undaerospace.com/>
 - University of North Dakota Center for Innovation, http://www.innovators.net/innovators/public_html/
 - University of North Dakota Foundation, <http://www.undalumni.org/Page.aspx?pid=632>
 - University of North Dakota Alumni Association, <http://www.undalumni.org/Page.aspx?pid=632>
 - University of North Dakota Research Foundation <http://und.edu/research/research-foundation/>
 - University of North Dakota Fellows of UND Foundation
- VCSU – Valley City State University Foundation, <http://alumni.vcsu.edu/>
- WSC – Williston State College Foundation, <http://www.wscfoundation.com/>

The agreement between the North Dakota State College of Science and the North Dakota State College of Science Foundation is enclosed as an example of an institution-foundation agreement.

NDCC § 15-10-17

State law also recognizes the importance of collaboration between NDUS institutions and private organizations. North Dakota Century Code § 15-10-17 states, in part:

The state board of higher education has all the powers and shall perform all the duties necessary to the control and management of the institutions described in this chapter. In addition to the powers and duties specified in section 6 of article VIII of the Constitution of North Dakota, the board may:

* * *

8. Authorize an encourage university system entities to enter into partnerships, limited liability companies, joint ventures, or other contractual arrangements with private business and industry for the purpose of business or industrial development or fostering basic and applied research or technology transfer.

Open Records and Meetings

For some time, governing boards of institution-related foundations believed the foundations were not subject to the state's open records and meeting laws. However, in several opinions over the past decade, the attorney general has explained that most institution-related records and meetings are open to the public:

- North Dakota University System Foundation, June 25, 2013 (Opinion 2013-O-10)
- University of North Dakota Alumni Association and University of North Dakota Foundation, June 15, 2009 (Opinion 2009-O-08)
- North Dakota State University Research Foundation, January 9, 2006 (Opinion 2006-O-01)

An open records complaint has been filed with the attorney general concerning the Dickinson State University Foundation, which may result in another opinion clarifying public access to foundation records and meetings.

Also, the IRS now requires that all 501(c)(3) tax-exempt organizations annually file and make available to the public a tax return, which includes an entire section on the governance of the organization (e.g., names of directors, salaries of highest paid personnel, key policies, etc.).

The combination of the state's open records/meeting laws and the IRS 990 ensure that most foundation activities are transparent to the public.

Governance of Foundations

Governance of institution-related foundations presents a unique governance challenge. Institution leaders are often ex officio board members in order to be fully informed about foundation activities and to ensure close collaboration between the institution and foundation.

State law, NDCC §10-33-45(1), imposes a "good faith" requirement on all directors of a nonprofit corporation:

A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a director of the corporation.

Therefore, an institution official serving on a foundation board of directors has responsibilities to two organizations – the institution and the foundation. Accordingly, there may be a potential for conflicts of interest, especially if institution representatives control a board.

According to its website, the UND Foundation has 28 board members, but only four UND leaders (i.e., president, vice president for finance and operations, provost and vice president for academic affairs, and vice president of student affairs) are ex officio board members. Another example is the Bismarck State College Foundation, where only five of 81 board members are BSC representatives (interim president and four others). However, there are now only six members of the UND Research Foundation board of directors and three are UND leaders (president, vice president and associate vice president).

Under parliamentary procedure and the state law governing nonprofit corporations (NDCC § 10-33-46), there is a well-defined process for disclosing potential conflicts and not voting on agenda items when a conflict exists. You may recall that, when the UND Research Foundation Board of Directors sold the REAC building to UND, each organization retained an outside law firm because of the obvious conflicts.

Conclusion

Thank you for the opportunity to address the committee on this issue. I will answer any questions the committee members may have.

Policies and Procedures

SBHE Policies

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SUBJECT: 300s: Governance and Organization

EFFECTIVE: April 6, 2011

Section: 340.2 Foundations

1. The purpose of this policy is to promote and strengthen the operations of an institution's affiliated foundations, alumni associations, athletic clubs and other related organizations, ("foundations"). The following provisions set forth a framework which enables and enhances a sound and mutually supportive foundation/institution relationship. The foundation-institution relationship is derived from a shared interest in the institution's development. An institution's participation in and support of foundation operations are, therefore, appropriate and desirable.
2. For the purposes of this policy, a foundation is defined as an independent, non-profit organization established to support and advance the mission and objectives of an institution or institutional functions, including an athletics booster organization for which an institution is ultimately responsible or accountable under athletic association or conference rules.
3. A foundation is a private legal entity separate from the institution and must be governed accordingly to protect the foundation's private, independent status. However, because the State Board of Higher Education is responsible for ensuring the integrity and reputation of the University System, it must be assured of the manner in which any affiliated foundation will operate. Therefore, each institution and its foundation(s) shall negotiate and maintain a written operating agreement. The agreement must include:
 - a. A description of the services and benefits the institution and foundation provide each other and any payments made, including use of institution and foundation facilities, equipment, or employees by the other party or payments by one party to the other or to the other party's employees;
 - b. A description of reporting relationships and appointing authority for all employees employed by both a foundation and institution and employees employed by one entity with assigned duties and responsibilities to the other;
 - c. A description of any government functions delegated to the foundation and the foundation's acknowledgment and agreement that the institution retains ultimate authority regarding the delegated government functions. Although not intended to be an exhaustive list, the Board has determined that the following foundation activities are not government functions;
 1. All employment decisions concerning foundation employees including decisions related to appointment, compensation and benefits, dismissal, discipline and terms and conditions of employment;
 2. Determining foundation needs and priorities;

3. Buying, selling, donating, investing and managing real and personal property owned by the foundation;
4. The means and methods of distributing and determining the amount of foundation assets made available to the institution, its students, staff, faculty and officers;
5. The means and methods of distributing and determining the amount of foundation support for institution extracurricular, instructional, programmatic or department activities;
6. The means and methods of cultivating and soliciting potential individual, corporate or government donors and raising funds for the foundation;
7. The means and methods of accepting donations of any type and accounting for them;
8. The means and methods of recognizing students, staff, faculty, alumni, donors and persons of interest to the foundation;
9. Collecting, creating data bases and using information about current and former students, alumni, staff, faculty, donors and persons of interest to the foundation, provided that disclosure to or use by a foundation of student information maintained by an institution is subject to governing federal law restrictions;
10. The means and methods of marketing the foundation and its functions;
11. Participating in or supporting the social, cultural and athletic activities of the institution or its alumni association, athletic clubs, booster organizations or other organizations; and
12. Obtaining a fee from the institution in exchange for value related to any of these enumerated foundation activities.

Nothing in this subparagraph c. relieves a foundation from compliance with applicable federal or state laws, other Board policies and governing athletic association, athletic conference or other athletic organization rules applicable to these enumerated foundation activities.

- d. A process to ensure that the foundation will solicit input from the institution before defining the major needs and priorities of the foundation
- e. A requirement to provide the institution with GAAP-compliant financial statements, including separately reported current assets, noncurrent assets, current liabilities and noncurrent liabilities on the face of the financial statements and an annual GAAP audit of the foundation, or a draft of an audited financial statement submitted for but pending foundation board approval by September 15 each year for:
 1. all entities considered component units of the NDUS under GASB 39, and
 2. all other related organizations that are not component units, whose total assets exceed \$1 million and total program expenses exceed \$100,000, for the previous fiscal year-end
- f. How gifts, grants, donations and endowments are accepted and accounted for, including circumstances under which institution approval is required;
- g. The terms and conditions that govern any joint fundraising efforts and fundraising for institution capital projects, including language requiring Board approval to begin a formal fundraising campaign for new building construction, major renovations, or major building additions, as required by SBHE Policy 902.1.
- h. A provision governing access to, disclosure, security and custodial responsibility for confidential information;
- i. To the extent a foundation is supported in whole or in part by public funds, or expending public funds, or exercising public authority or performing a government function, a provision acknowledging application of North Dakota's open records laws to records relating to activities paid for with public funds or government functions delegated to the foundation. However, payment of a fee by an institution for services provided by a foundation that constitutes an exchange for value received does not constitute public support of a foundation and the use of those funds by a foundation does not give rise to a claim that the foundation expends public funds;
- j. A requirement and mechanism for foundation disclosure, reporting and accounting relating to any intellectual property assigned by the institution to the foundation under SBHE Policy 611.2, including, but not limited to,

- provisions requiring that the foundation report to the institution regarding patents and patent applications, licensing and licensing agreements and other or additional developments and improvements;
- k. A provision governing use of the institution's name, trademark or other intellectual property; and
 - l. A provision that addresses conflicts of interest or potential conflicts of interest involving institution and foundation officers or employees.
4. Agreements shall be reviewed annually, and updated as necessary. A copy of each agreement shall be filed with the NDUS General Counsel.
 5. Institution presidents shall inform the Chancellor of concerns regarding foundation activities they are not able to resolve by informal discussion. Institution presidents shall promptly report to the Chancellor any breach of an agreement or failure on the part of foundation officers or employees to adhere to standards appropriate to such organizations. Foundation officers may inform the Chancellor of any breach of an agreement or failure on the part of institution officers to adhere to appropriate standards. The Chancellor shall take reasonable and appropriate action responding to such reports, which may include informal discussion with the parties, a request or recommendation to the parties, a report to the Board or recommendation for Board action.

History:

New Policy. SBHE Minutes, November 18-19, 1999.

Amendments, SBHE Minutes, June 21, 2007.

Amendments, SBHE Minutes, October 23, 2009.

Amendments, SBHE Minutes, June 17, 2010.

Amendments SBHE Minutes, April 6, 2011.

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**North Dakota State College of Science and
North Dakota State College of Science Foundation**

Memorandum of Agreement

This Memorandum of Agreement (MOA), effective the 29th day of August, 2013, between the North Dakota State College of Science ("College") and the North Dakota State College of Science Foundation, at Wahpeton, North Dakota ("Foundation").

The Foundation was begun in 1988 and is duly incorporated under the laws of the state of North Dakota, with the purpose of providing support and assistance in the development and advancement of the College. The Foundation and the College wish to continue this mutually beneficial working relationship, with the Foundation retaining its corporate independence and the College wishing to be assured that the Foundation will adhere to standards appropriate to such organizations and will at all times enhance the integrity and reputation of the College.

North Dakota State Board of Higher Education Policy 340.2 requires that the relationship between higher education institutions and their Foundations be set out in a written operating agreement.

ACCORDINGLY, the parties agree:

- I. The Foundation and its employees and activities are funded within the Foundation budget, except to the extent modified by this MOA. In exchange for services and assistance to be provided by each party to the other, described in this Agreement, the Foundation shall provide the College with an annual grant, to be used solely for the purpose of funding sixty-five per-cent (65%) of the salary, wages, and benefits of the Foundation Director, Foundation Donor Development Representative and Foundation Donor Development Manager, Event/Web/Data Coordinator and other permanent or temporary employees as may be hired from time to time by the Foundation. The grant shall be drawn upon on an as-needed basis. Payroll services and reporting and payroll costs of the Foundation staff will be provided by the College.
- II. The Foundation staff shall consist of the following personnel:
 - A. Foundation Executive Director
 1. The position of Foundation Executive Director is a full-time position and is an employee of the Foundation. The Board of Directors of the Foundation is the appointing authority for this position, with full authority to appoint, direct, evaluate or remove the Executive Director.
 2. The Foundation Executive Director shall follow the personnel policies and procedures set forth in a job description outlined by the Foundation Board. To the extent permitted under applicable laws

and State Board of Higher Education policy, the Foundation Executive Director shall be afforded the opportunity to receive the same benefits as are made available to North Dakota state higher education employees. Those benefits may include, but are not limited to, health, hospital, medical, retirement, disability, tuition benefits and unemployment benefits.

3. The Foundation Executive Director's salary shall be determined by the Foundation's Board of Directors.
4. In addition to the duties of Foundation Executive Director, the Foundation Director shall assist the College President in developing strong relationships with business and industry and in forming partnerships between business and industry and the College. The Foundation Director will have a working title of Director of Development when performing these duties for the College.

B. Donor Development Representative

The Donor Development Representative is a full-time position and is an employee of the Foundation. The Foundation Executive Director is the appointing authority, with full authority to appoint, direct, evaluate or remove the Donor Development Representative. The salary of the Donor Development Representative shall be determined by the Foundation Executive Director. To the extent permitted under applicable laws and State Board of Higher Education policy, the Donor Development Representative shall be afforded the opportunity to receive the same state benefits as are made available to North Dakota state higher education employees. Those benefits may include, but are not limited to, health, hospital, medical, retirement, disability, tuition benefits and unemployment benefits. The Donor Development Representative shall follow the personnel policies and procedures set forth in a job description outlined by the Foundation Board.

C. Donor Development Manager

The Donor Development Manager is a full-time position and is an employee of the Foundation. The Foundation Executive Director is the appointing authority, with full authority to appoint, direct, evaluate or remove the Donor Development Manager. The salary of the Donor Development Manager shall be determined by the Foundation Executive Director. To the extent permitted under applicable laws and State Board of Higher Education policy, the Donor Development Manager shall be afforded the opportunity to receive the same benefits as are made available to North Dakota state higher education employees. Those benefits may include, but are not limited to, health, hospital, medical, retirement, disability, tuition benefits and unemployment benefits. The Donor Development Manager

shall follow the personnel policies and procedures set forth in a job description outlined by the Foundation Board.

D. Event/Web/Data Coordinator

The Event/Web/Data Coordinator is a full-time position and is an employee of the Foundation. The Foundation Executive Director is the appointing authority, with full authority to appoint, direct, evaluate or remove the Event/Web/Data Coordinator. The salary of the Event/Web/Data Coordinator shall be determined by the extent permitted under applicable laws and State Board of Higher Education policy, the Event/Web/Data Coordinator shall be afforded the opportunity to receive the same benefits as are made available to North Dakota state higher education employees. Those benefits may include, but are not limited to, health, hospital, medical, retirement, disability, tuition benefits and unemployment benefits. The Donor Development Manager shall follow the personnel policies and procedures set forth in a job description outlined by the Foundation Board.

E. Temporary Employees

1. From time to time, at the discretion of the Foundation Executive Director, a temporary employee may fill a part-time temporary position with the Foundation, under such terms and for that compensation as determined by the Foundation Executive Director. Such position or positions may not include benefits.

F. Consultant Services

1. Consultant services shall be contracted for by the Foundation on an as needed basis.
2. The monies to be paid for such consultant services shall be provided by the Foundation. By way of example, the Foundation may, in its sole discretion, employ consultants for College Review, grant writing for Foundation needs, problems and concerns related to software which the Foundation is using or desires to use, and fund raising.

G. Other Employees

1. From time to time, at the discretion of the Foundation Executive Director, additional fulltime employees may be employed by the Foundation, under such terms and for that compensation as determined by the Foundation Executive Director. These employees shall be hired, directed, evaluated and removed by the Foundation Executive Director. These employees shall be afforded the opportunity to receive the same benefits as are made available to North Dakota state higher education employees. Those benefits

include, but are not limited to, health, hospital, medical, retirement, disability, tuition benefits and unemployment benefits.

III. College Facilities Use and Office Space

1. The College shall furnish office space (Rooms 105, 106, 107 in the Harry Stern and Ella Stern Cultural Center) for the Foundation, to include janitorial services, electrical, telephone, and heat. In exchange for the use of this facility and supporting services, the Foundation cooperates with collection and maintenance of alumni data information for departments, fundraising endeavors for a variety of activities for the College, grant writing for departmental projects, and sponsors the artist in residence series on campus and ambassadors for NDSCS. All office equipment is owned by the College, with the exception of equipment purchased with Foundation funds. The Foundation purchases its own office supplies and reimburses the College for postage costs. The College name and address is printed on all Foundation materials and distributed internationally.
2. Additional facilities, services, and/or equipment required for Foundation priorities will be negotiated between the Foundation Executive Director and the President of the College, on an as needed basis.

IV. Instructional Resources Center

In conjunction with the Instructional Resource Center, the Foundation will be provided photography and video production services at the typical College rate and as agreed upon between the College and Foundation.

V. Information Technology and Marketing Departments

Services of the College's Information Technology and Marketing Departments will be made available to the Foundation as needed. These services shall be provided on an annual basis at no charge to the Foundation.

VI. Print Services

Services of the College Print Services will be made available to the Foundation. Copying and duplicating will be made available to the Foundation at a cost/piece rate.

VII. Association Professional Liability Insurance

The Foundation carries and pays directly for Association Professional Liability Insurance.

VIII. Other Services and Funding

1. The College will financially sponsor 3 to 4 annual scholarship luncheons and the Foundation staff will make all the arrangements and prepare the scholarship booklet.
2. The Foundation has established a budget of \$15,000 per year for use by the College President and Foundation Director. This fund is for expenditures, with accompanying receipts, which are related to Foundation matters that College chooses not to cover or, that the State of North Dakota does not, or will not, allow. The amount will be reviewed on an annual basis.
3. The Foundation shall set aside funds based on approximately 5 % of the total earnings of the investment portfolio, including the local funds, but excluding real estate holdings, for allocation to priorities of the Foundation, including but not limited to scholarships, professional development and college promotion. The percentage for distribution shall be determined by quarterly average.
4. Each year the Foundation will provide an opportunity for requests from college professional development committees and departments for college professional development up to \$1500 per the Curry Estate Fund.
5. The Foundation will continue to raise funds for the College through traditional development methods, including estate planning, wills, trusts, annuities and other giving opportunities.
6. The Foundation will continue to support activities on campus as time and funds are available.
7. The Foundation and Foundation Executive Director shall consult and work in a collaborative manner with the College President and other College officers to establish Foundation priorities and to support the major needs and priorities of the College.
8. The terms and conditions governing fundraising efforts shall be discussed between the College President and the Foundation Executive Director, and approved by the Foundation Board of Directors. As required by SBHE Policy 340.2, formal fundraising campaigns for major capital projects require State Board of Higher Education approval.

- IX. Neither the Foundation nor the College shall hereby create any liability to the other except that which is expressed herein, and neither party has any right or authority to incur or create any obligation for or to legally bind the other party in

any way. Foundation and its employees are independent contractors, except that its employees and agents shall be subject to the oversight and direction of College with respect to use and maintenance of "education records" as that term is defined in Federal Educational and Family Rights Privacy Act ("FERPA").

X. Termination and Review of the Agreement

This Agreement may be terminated by either party, upon giving no less than twelve months notice in writing to the other party. Any termination under this section shall be without prejudice to any obligations or liabilities of either party accrued prior to termination. This Agreement shall be reviewed on an annual basis or more frequently as deemed necessary by the Foundation Board or the College President.

XI. The request for funding form to be submitted by College departments to the Foundation is set out as Appendix #1. Policy Statement for Foundation is hereby made a part of this Agreement and is set out as Appendix #2.

XII. Confidential Records; Open Records

Definitions:

1. "Confidential Information." Information provided by or at the direction of College, or to which access was provided in the course of Foundation's performance of services, that is (i) an Education Record or Personally Identifiable Information, (ii) a Social Security number or other confidential government issued identification number, (iii) as defined in North Dakota Century Code section 44-04-18.4 or (iv) other Confidential Information defined by federal or state law.
2. "Education Records" has the meaning set forth in FERPA.
3. "Personally Identifiable Information" has the meaning set forth in FERPA.
4. "Student" has the meaning set forth in FERPA. References to individuals include Students.
5. "Exempt information" has that meaning set out in North Dakota Century Code section 44-04-17.1, and means information that is neither required by law to be open to the public, nor is confidential, but may be opened or closed to the public at the discretion of the public entity.

Confidentiality:

Foundation acknowledges that it may receive or have access to College's Confidential Information. Foundation agrees that it will use Confidential Information solely and exclusively for the purposes for which this information, or access to it, is provided, and in order to render Foundation services. Foundation will treat Confidential Information in accordance with applicable laws and

policies, and not disclose Confidential Information except as required or permitted by law and the terms of this Agreement.

Open Records:

Foundation understands and agrees that excluding records that are Confidential Information or exempt from disclosure under state law, the records obtained or generated by Foundation under this agreement and in possession of Foundation or its employees or agents that may be open to the public upon request under state open records laws include records relating to College function(s) delegated to Foundation and records concerning Foundation activities supported with public funds. Foundation agrees to contact College immediately upon receiving a request for information under the open records law and to comply with College instructions on how to respond to the request.

Standard of Care for Confidential Information:

Foundation shall implement and maintain commercially reasonable information safeguards that are no less rigorous than accepted industry practices and that comply with all applicable laws, regulations and business guidance issued by the Department of Education and the Federal Trade Commission to protect Confidential Information from unauthorized access, destruction, use, modification or disclosure, and to the extent that payment card information is stored or transmitted through Foundation's system, with the Payment Card Industry Data Security Standard ("PCI DSS") requirements.

Foundation shall ensure that any Social Security numbers, driver's license numbers, financial account information, payment card information and other types of Confidential Information that would reasonably be considered highly sensitive, and are maintained by Foundation, are encrypted during transmission, whether sent by email, fax or otherwise and when stored on a mobile device, such as a portable computer, flash drive, personal digital assistant, or phone. All sensitive protected information stored on databases, servers or other non-mobile devices shall be protected against all reasonably anticipated forms of compromise, whether by use of encryption, logical access controls, or other robust safeguards. All software for systems or applications designed to handle Protected Information or other confidential information must utilize safeguards so that identities of individuals are protected.

XIII. Foundation Records for Review by College

1. The Foundation shall provide access to data and records to the College on a need-to-know basis in accordance with applicable laws, Foundation policies and guidelines. The Foundation shall provide copies of its annual report and other information that may be publicly released. The Foundation shall

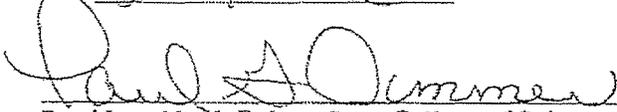
provide other records and data as may be reasonably requested by the President of the College.

2. The Foundation agrees that, if it selects a certified public accounting firm to conduct a full and complete annual audit of its finances or employs a legal firm to serve as foundation legal counsel, it will notify College as to the names of the professionals providing service to the foundation. The College is required to provide certain information regarding its foundation to the State of North Dakota in the course of the annual financial audit of the College. Foundation agrees to provide to President annually on or before August 31 a current financial statement, in draft form if final is not available, most recently filed IRS Form 990, and if available, most recent audit report; a list of Foundation's governing board, officers and employees, including their status as a voting or nonvoting member; the names, addresses and phone numbers of Foundation's fund managers; and a detailed list of all payments and receipts during the fiscal year, as well as receivable and payable balances, between the Foundation and the College.

This Memorandum of Agreement has been examined by each of us and we do hereby, with our signatures, give approval.

Date

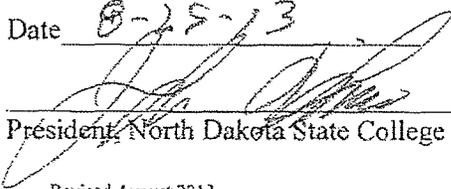
8-29-2013



President, North Dakota State College of Science Foundation

Date

8-25-13



President, North Dakota State College of Science

Revised August 2013