



ADDENDUM to the Board of Trustees Meeting Agenda

Eastern Wyoming College
Board Room
9-10-24

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I. Additional Action Items:

A. Approve the Fiscal Year 2024 Requested Budget Authority Increases: CFO Kwin

Wilkes

Pursuant to W.S. 16-4-113, a public hearing was held on August 22, 2024, to consider and take comments on the proposed fiscal year 2024 budget authority increases. No comments from the public were offered during the hearing. We propose to increase the Unrestricted Operating Fund budget by a total of \$260,000 to balance the revenues and expenses. It will be necessary to increase funding by \$135,000 for Institutional Support to cover outside contracted services for the fiscal year. Funding should also be increased in Operations & Maintenance of Plant by \$50,000 to cover services contracted to and billed by Sodexo. Additionally, it will be necessary to increase the budget in Scholarships by \$75,000 to cover late awards for summer school. Within the Restricted Fund budget, it will be necessary to transfer \$375,000 to the WIP grants to establish budgets for these new programs. Within the Unrestricted Auxiliary Fund, Food Service will need to be increased by \$300,000 for the Sodexo management contract.

B. Approve the EWC Foundation Operating Agreement.....2

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OPERATING AGREEMENT
Between Eastern Wyoming College
and the Eastern Wyoming College Foundation

THIS OPERATING AGREEMENT (this "Agreement") is made on this ___ day of _____ 2024, by and between the EASTERN WYOMING COLLEGE (hereinafter "EWC" or "the College") and THE EASTERN WYOMING COLLEGE FOUNDATION (hereinafter the "Foundation") and created by the parties by mutual consent.

RECITALS

WHEREAS, EWC is the body corporate established by statute as a subdivision of Goshen County, Wyoming that established and maintains EWC. See WYO. STAT. ANN. § 21-18-102(a) (viii) (2023); and

WHEREAS, EWC is the institution established under the "Wyoming Community College System Code" by the Eastern Wyoming College. See WYO. STAT. ANN. § 21-18-102(a)(xiii) (2023); and

WHEREAS, the EWC Board of Trustees is the elected "Governing board" of Eastern Wyoming College. See WYO. STAT. ANN. § 21-18-102(a)(xiii) (2023); and

WHEREAS, the Foundation is a private nonprofit organization tax-exempt in accordance with 26 U.S.C.A. § 501(c)(3) (2010) of the Internal Revenue Code of 1986, as amended, established for the primary purpose of generating, receiving, holding, investing, managing and allocating funds for the benefit and advancement of the College, and is operated separately and independently of EWC; and

WHEREAS, the Foundation Board of Directors is a group of individuals elected to govern the Foundation; and

WHEREAS, the parties desire to formalize their relationship to achieve an efficient coordination between them to foster the educational and cultural programs and services of the College; and

WHEREAS, the purpose of this Agreement is to define the nature of the relationship and exchange of services between EWC and the Foundation.

NOW THEREFORE, in consideration of the mutual covenants and commitments of EWC and the Foundation ("Parties") contained herein, the mutual benefits to be gained by the performance hereof and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

TERMS OF AGREEMENT

1.0 -Term

This Agreement shall commence on the ____ of _____ 2024, and ~~may be reviewed~~ shall continue for a period of ____ years, with an option to renew for another ____ years by mutual decision of both parties. This agreement may be reviewed annually by the Parties. However, the parties shall, within 90 days of the ____ anniversary of this Agreement's execution, confer as to whether to extend or terminate this Agreement. Either party may terminate this Agreement at any time without penalty, provided that written notice of such termination is furnished to the other party at least sixty (60) days prior to the effective date of termination. All services shall be completed until the termination of this Agreement.

2.0 -EWC Name, Seal and Logotype

Consistent with its mission to help advance the plans, priorities, and objectives of the College, the Foundation is granted a license to use the name Eastern Wyoming College and is granted a license to use the EWC logo until such time as the Foundation dissolves, the Foundation ceases to be recognized as a tax-exempt organization, or EWC's Board of Trustees withdraws its designation of the Foundation pursuant to Section 4.0 below. The Foundation may also select and approve a logo as its own identifying mark.

3.0 -The Foundation's Relationship to EWC

The Foundation's Board of Directors is responsible for the control and management of all assets of the Foundation, including the prudent management of all gifts made to the Foundation consistent with donor intent and according to all applicable laws.

The Foundation is responsible for the performance and oversight of all aspects of its operations based on comprehensive bylaws that clearly address the board's fiduciary responsibilities, including expectations of individual board members based upon legal and ethical guidelines and policies.

As described below, the Foundation shall support various departments of the College ~~units~~ and the College in general through the services outlined in Section 7.0 unless the parties agree otherwise by a written addendum to this Agreement.

4.0 -EWC's Relationship to the Foundation

EWC formally designates the Foundation as the principal fundraising organization for EWC.

EWC President is responsible for communicating EWC's priorities and long-term plans to the Foundation. EWC recognizes that the Foundation is a private corporation with the authority to keep all records and data confidential, consistent with the law. As such, EWC and its employees and other agents will adhere to policies and procedures that protect the confidential nature of the Foundation's data and foster the individual reasonable expectation of privacy attendant to that data as allowed by law.

EWC President shall serve as ex-officio, non-voting member and three (3) members of the EWC Board of Trustees -shall serve ~~as an ex-officio, non-as~~ voting members of the Foundation ~~who - Three members of the EWC Board of Trustees shall serve as voting members of the Foundation board of directors and~~ shall also assume a prominent role in fundraising activities on behalf of EWC.

5.0 - Foundation Staffing

EWC and the Foundation ~~Board~~ will jointly agree on the hiring of a Director of the Foundation who will be an employee of EWC and who will report directly to the EWC President, and who will have as a significant portion of his/her job description the responsibility for the oversight of the Foundation staff and operations. This position will serve as the Foundation's executive staff. At the discretion of the Parties, they may enter into an employment agreement to memorialize the duties, responsibilities and compensation of the Director and/or any other staff member employed by the College, and is assigned to staff the Foundation

In collaboration, the Foundation and EWC, through its executive staff (the Director of the Foundation) will be responsible for the assignment of duties and positions, supervision, and evaluation of all staff assigned to the Foundation. In addition, the Foundation shall be a part of the selection committee for EWC employees hired to staff the Foundation. In the event an employee assigned to staff the Foundation by EWC is found by the Foundation to be unable to fulfill the assigned responsibilities, the Foundation shall notify EWC in order for EWC to evaluate the information and determine the future employment, discipline and/or termination of said employee. EWC will not make a major decision or change regarding any employee assigned to the Foundation without consultation with the Foundation in a spirit of mutual cooperation.

Employees assigned to staff the Foundation are EWC employees and shall receive the same benefits as EWC benefited employees. For purposes of this Agreement, "Benefits" means health, dental, or vision insurance, employer contributions to any individual retirement accounts or 401(k)s, 403(b)s, and any other incentive or plan that benefits the employer in addition to monetary compensation.

EWC is responsible for paying for all employee related costs except as hereinafter provided. ~~EWC, in consultation with the Foundation shall establish the salary and benefits for the Director of the Foundation with reimbursement at 25% by the Foundation~~ The Foundation shall pay 25% of the salary for the Foundation's Executive Director and the College shall pay the remaining 75% and 100% of any and all Benefits. The salaries for EWC staff providing services to the Foundation shall be in accordance with EWC salary schedules. EWC will provide Foundation with information pertaining to salary or benefit increases that are applicable to EWC employees. The Foundation may pay additional compensation to one or more of said staff if it deems such payment appropriate, upon agreement of the EWC Board of Trustees and the President.

For staff partially funded by the College and partially funded by the Foundation, the EWC President will consult the Foundation's Board President with respect to the evaluation of annual salary increases. A determination will be made as to whether or

not there is adequate unrestricted income to cover the Foundation's share of the increase. Should the Foundation determine that its unrestricted income is insufficient to cover such increase, the Foundation and EWC shall determine an equitable portion of the salary increase to be paid by the Foundation that is fiscally responsible to the Foundation. This decision shall be documented and approved by Foundation Board President and the EWC President.

The Foundation retains the right to submit requests, through the Director of the Foundation and appropriate ~~College-EWC~~ channels, to fill or add staff positions. The Foundation may submit requests at any time during the year for positions funded 100% by the Foundation. The Foundation shall submit requests through the annual EWC budget process for positions to be funded partially or in full by EWC. In cases of an emergency, the Foundation may submit a request to the President for the EWC Board of Trustees and President's approval.

Any employee of the College who is assigned to staff the Foundation, unless otherwise agreed, the College shall be responsible for paying 100% of all salary and Benefits. If the Foundation hires any employee, the College shall pay 100% of the Benefits

All employees assigned to staff the Foundation shall be required to abide by the policies and procedures of EWC.

6.0 EWC's Responsibilities

EWC shall provide all services and attendant fees to the Foundation as outlined below:

6.1 Funding Priorities

At least annually, the EWC President will present to the Foundation Board of Directors a written list of EWC's current development priorities. EWC shall rely upon the Foundation, or its designee, to assist in determining the priorities and the funding feasibility of each.

More specifically, in the spring of each fiscal year, EWC shall, in conjunction with the Foundation, develop annual development goals that shall account for EWC-wide development priorities for the upcoming fiscal year. These priorities and goals shall consider EWC's strategic needs, as defined by EWC, as well as the Foundation's resources, personnel and capacity.

6.2 Integrated Advancement

EWC will actively coordinate its communications, internal relations, and external relations activities with the Foundation to develop a programmatic culture within the College's student, alumni, and private support constituencies that encourages increased philanthropic support, constituent engagement, and private advocacy in support of the EWC.

EWC shall cooperate with the Foundation in development of its fundraising programs and campaigns, including provision of information, data, plans, facilities for meetings

on the EWC campuses, and such other materials and services as may reasonably be necessary for the successful conduct of fundraising programs and campaigns.

EWC shall deliver via email, regular U.S. Mail or through other convenient means, monthly invoices to the Executive Director of the Foundation, including but not limited to salary expenses, accounting expenses and miscellaneous expenses if any.

6.3 Fundraising

EWC has established and will enforce policies that support the Foundation's ability to coordinate all fundraising activities, including those of the Lancer Club, seeking and soliciting private support for the benefit of EWC.

Notwithstanding any of the foregoing, the President of EWC shall, in its discretion, approve any financial benefit to the Lancer Club. Such approval shall be consistent with EWC's guidelines established for financial approval throughout the College. Any financial benefit to the Lancer Club shall be consistent with the NJCAA bylaws, rules and regulations.

EWC Board of Trustees and the EWC President shall work in conjunction with the Foundation staff and Foundation Board of Directors to identify, cultivate, solicit, and steward donors and prospective donors of private gifts. In so doing, EWC President, appropriate administrators, and volunteers shall adhere to all applicable Foundation policies and procedures.

Additionally, EWC acknowledges that the Foundation has principal responsibility for fundraising on behalf of EWC. All EWC representatives will coordinate fundraising initiatives, including major gifts solicitations, with the Foundation. EWC recognizes the Foundation exists for the benefit of EWC and not for the benefit of individuals within EWC.

6.4 Provision of Data

~~When allowed~~ Unless restricted by law, EWC shall provide to the Foundation data reasonably requested by the Foundation and deemed necessary by the Foundation for the maintenance and support of fundraising efforts.

6.5 Other Considerations

EWC and the EWC Board of Trustees reserve the right to reject any gift. If mutual agreement of EWC and the Foundation cannot be reached for the acceptance or rejection of a gift, the default decision will be to reject the gift.

EWC agrees to make office space available to Foundation and to provide the following utilities and resources in conjunction with the office space at no cost to the Foundation: electrical, gas and water service, telephone service, computer network access and office furnishings. This list is not intended to be an exhaustive list, and EWC agrees to provide such other reasonable office amenities and resources as are customary and consistent with the offices of EWC.

EWC agrees to provide access to Foundation of EWC services, including consumable office supplies, mail services, use of audiovisual equipment and services, computer services, duplicating, personnel and payroll services, printing and public relation services, management of property owned by Foundation, and other services and supplies available to EWC departments in accordance with normal EWC procedures.

7.0 Foundation Responsibilities

The Foundation shall provide EWC with fundraising and asset investment services, which shall include all services related to the following activities:

7.1 Fundraising

In a coordinated and cooperative effort with EWC, the Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of EWC as established by EWC, as follows:

1. *Donor Development, Relations and Stewardship.* The Foundation is responsible for planning and executing comprehensive fundraising and donor-acquisition programs designed to encourage prospective and current donors to support EWC's mission and programs. Activities include donor identification and cultivation, donor research, donor solicitation, periodic updates and/or reports to donors to assure that donor intent is being fulfilled, and appropriate acknowledgment, receipting and documentation of donor gifts to the Foundation.
2. *Fundraising Programs.* Pursuant to the Foundation's policies on gift acceptance and constituent relations, the Foundation shall plan, coordinate, and execute activities designed to identify, cultivate, and solicit support of all types from private entities including, but not limited to, individuals, corporations, and other foundations.
3. *Campaigns.* The Foundation shall be responsible for planning and executing comprehensive, multi-year campaigns and developing fundraising goals and methodologies for obtaining support for EWC's strategic objectives as defined in collaboration with the EWC Board of Trustees, EWC President, and other EWC officials. In performing this service, the Foundation shall also provide EWC with counsel and direction as to the feasibility of certain goals, projects, and initiatives for which EWC is soliciting or would like to solicit support.
4. *Educational Programs.* To effectively implement the Foundation's fundraising initiatives, the Foundation shall provide educational programs for EWC officials and personnel who may be involved in fundraising with information about fundraising strategies and techniques, as well as information about the resources provided by the Foundation's programs, policies, and procedures.
5. *Development Events.* All events that are considered to be for the purpose of cultivating, stewarding, and/or recognizing donors and prospective donors of EWC shall be cleared through the Foundation to ensure coordination of fundraising activities. The Foundation is not responsible for directing or coordinating events for EWC that are not

for the purposes outlined in this section.

7.2 Gift Acceptance and Acknowledgment

The Foundation will establish, adhere to, and periodically assess its gift acceptance and fund management policies and procedures. The Foundation will promptly acknowledge and issue receipts for all gifts made to the Foundation and provide appropriate recognition and stewardship of such gifts. If gifts are received by EWC instead of the Foundation, the Foundation will provide appropriate recognition for such gifts when notified by EWC. By law, the Foundation cannot acknowledge or provide receipts for gifts made directly to EWC.

The Foundation, on behalf of EWC, shall routinely accept gifts-in-kind of equipment and supplies intended for EWC use.

7.3 Donor Records and Other Confidential Documents

The Foundation shall establish and enforce policies and procedures to comply with all applicable laws and regulations and to protect the confidentiality of Foundation information and the reasonable expectation of privacy attendant to donor and prospective donor data. It shall be incumbent upon the Foundation to inform and identify the information and documentation that the Foundation deems confidential. By entering into this Agreement, EWC, its agents, officers and assigns hereby agrees to keep confidential all Foundation information hereby obligating EWC to keep such Foundation information strictly confidential at all times and not to share it any form with others. If copies of confidential documents are provided to EWC, its agents, officers, or assigns, such copies shall be returned to the Foundation or destroyed with the prior permission of the Foundation when the intended use for such confidential documents has been completed by EWC. EWC, its agents, officers, or assigns shall treat all Foundation information that is not made available to the general public in the ordinary course of the Foundation's operations as confidential for the purposes of this Agreement.

7.4 Asset Investment

If EWC deposits gifts with the Foundation for investment purposes, the Foundation may pool those funds with the Foundation's funds and other funds held by the Foundation in a pooled investment portfolio ("Pooled Investments"). In doing so, it is mutually understood that:

1. EWC retains ownership of EWC funds;
2. The Foundation is authorized but not obligated to invest EWC funds in the same manner as other Foundation funds;
3. EWC funds are subject to the Foundation's administrative fees in accordance with the Foundation's policies;
4. EWC funds may be pooled with the Foundation's institutional funds and other funds for the purpose of participating in the Pooled Investments;
5. There is no trust or fiduciary relationship between the Foundation and EWC express or implied regarding the Pooled Investments;
6. Pooled Investments shall be invested in accordance with the Foundation's

- investment policy;
7. There is an inherent risk involved with investing that is beyond the control of the Foundation, including the potential for loss of EWC's principal in the initial investment, loss of subsequent deposits, loss of interest or appreciation, and loss of other financial gains;
 8. Neither party is obligated to offer or accept investment advice to or from the other party;
 9. The Foundation has not and does not hold itself out as an investment advisor or as a professional investment corporation;
 10. EWC's representative for all matters relating to the investment of EWC funds by the Foundation is the EWC President or his/her designee.

For all EWC funds invested by the Foundation, the Foundation shall provide periodic summaries and confirmations of balances of EWC funds as may be requested or required. Additionally, the Foundation shall provide EWC with a copy of the most recent investment policy.

Upon written notice from EWC requesting withdrawal of EWC funds from the Pooled Investments, the Foundation will withdraw the funds within a reasonable length of time. Any adverse effect on the remaining investment portfolio shall be reimbursed in a pro rata amount considering the ratio of EWC funds to portfolio funds. The provisions of this Section 7.4 shall be subject to and comply with all current and future applicable federal and state laws including the Uniform Prudent Investor Act (UPIA) and the Uniform Prudent Management of Institutional Funds Act (UPMIFA), as amended or modified from time to time.

7.5 Asset Management

The Foundation will establish and, from time to time, modify asset-allocation, disbursement, and spending policies and procedures that adhere to all current and future applicable federal and state laws including the Uniform Prudent Investor Act (UPIA) and the Uniform Prudent Management of Institutional Funds Act (UPMIFA), as amended or modified from time to time.

The Foundation will receive, hold, manage, invest, and disburse contributions of cash, securities, and other forms of property, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred-gift instruments.

The Foundation's board of directors is responsible for the control and management of all assets of the Foundation, including the prudent management of all gifts consistent with donor intent.

The Foundation's responsibilities shall include management of assets received, held by or entrusted to the Foundation, in support of EWC and in accordance with this Agreement. Support of EWC shall include, but shall not be limited to, providing scholarships for students and providing funds for educational activities and programs, cultural programs and athletic programs. The Foundation shall endeavor to preserve and enhance the value of the assets at all times and shall not intentionally cause any devaluation of the assets.

The Foundation funds include all funds raised by the Foundation for the benefit of EWC through its various fundraising activities. The Foundation funds also include the restricted and unrestricted endowments and other funds, the ownership and title of which have been, or are in the future transferred to, or received by, the Foundation.

The Foundation will provide effective and prudent management of the Foundation funds, including investment of the Foundation funds through one or more qualified investment firms, according to a well-designed and Foundation Board approved investment policy.

The Foundation will receive, hold, manage, invest, and disburse contributions, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred gift instruments.

The Foundation shall maintain individually named endowments free and clear of any liens, charges, encumbrances and other restrictions other than those restrictions imposed by the original donors or by law.

7.6 Fund Administration and Distribution

The Foundation will administer private gifts to benefit EWC and will transfer funds to the designated entity within EWC in compliance with applicable laws, EWC policies, and fund agreements.

The Foundation's disbursements on behalf of EWC must be for reasonable expenses that support EWC and its programs, are consistent with donor intent, and do not conflict with any applicable laws and regulations.

When establishing a new account, the Foundation will disclose any terms, conditions, or limitations legally imposed by the donor or legal determination on the gift. EWC will abide by such restrictions and provide appropriate acknowledgment of such terms, conditions, or limitations and documentation of compliance.

When distributing funds to EWC, the Foundation will disclose any terms, conditions, or limitations imposed by the donor or legal documentation of the gift. EWC will abide by such restrictions and provide appropriate documentation when required.

7.7 Other Responsibilities

The Foundation will engage an independent accounting firm annually to conduct an audit of the Foundation's financial and operational records and will provide EWC with a copy of the annual audited financial statements, as a confidential document. Copies of the final reports, including the financial statements, opinion letter, management letter, internal control letter, and other documents prepared by such auditor, shall be furnished to the EWC Board of Trustees, subject to the requirements of paragraph 7.3 of this Agreement.

With the explicit approval of the Foundation Board, and the EWC Board, the Foundation

may from time to time serve as an instrument for entrepreneurial activities for EWC, including but not limited to the purchasing, developing, or managing of real estate for EWC, as well as EWC-related improvements or expansion.

The Foundation may accept licensing agreements and other forms of intellectual property, borrow or guarantee debt issued by third parties, or engage in other activities to increase Foundation revenue consistent with its mission.

7.8 Compliance

In fulfilling these obligations, the Foundation shall comply with applicable state and federal law and its own policies and procedures, including maintenance of a conflict-of-interest policy for board members and staff.

7.9 Confidentiality and Access to Information by Non-Foundation Employees

The Foundation will provide to EWC and its employees and other agents, upon request, copies of or access to publicly available documents of the Foundation including, but not limited to: Articles of Incorporation, Form 990, Return of Organization Exempt from Income Tax, and its Annual Report.

The parties agree that all other information, policies, guidelines and other data is confidential information not publicly available and shall under all circumstances be subject to the provisions of paragraph 7.3 of this Agreement. Confidential information includes, but is not limited to, the following:

1. Donor contact information including, but not limited to, addresses, phone numbers, and email addresses;
2. Portions of records that disclose a donor's or prospective donor's personal, financial, estate planning or gift planning matters;
3. Records received from a donor or prospective donor regarding such donor's prospective gift or pledge;
4. Records containing information about a donor or a prospective donor in regard to the appropriateness of the solicitation and dollar amount of the gift or pledge;
5. Portions of records that identify a prospective donor and that provide information on the appropriateness of the solicitation, the form of the gift or dollar amount requested by the solicitor, and the name of the solicitor;
6. Portions of records disclosing the identity of a donor or prospective donor, including the specific form of gift or pledge that could identify a donor or prospective donor, directly or indirectly, when such donor has requested anonymity in connection with the gift or pledge. This does not apply to a gift or pledge from a publicly held business corporation.
7. Information relating to fundraising plans and strategies;
8. Trade secret information and information relating to the business of any Foundation subsidiary which, if released, could create a competitive disadvantage;
9. Individual employee information other than name, title and salary;

10. Individual student information;
11. Information relating to trusts and annuities administered by the Foundation, except as to actual gifts to the Foundation from such a trust or annuity;
12. Other information protected by law;

When necessary or beneficial to the efficient execution of fundraising activities, the Foundation may provide access to Foundation data and records to select EWC personnel on a limited, need-to-know basis in accordance with paragraph 7.3 of this Agreement. Providing such access shall not negate the confidential nature of the Foundation's information and records or the classification of such information and records as trade secrets. Additionally, providing such access does not undermine the reasonable expectation of privacy of donors and prospective donors with respect to the information provided to and/or maintained by the Foundation. Any non-Foundation employee with access to Foundation information shall be held to the highest standard of confidentiality and sign a confidentiality agreement specifically governing such access.

8.0 General Provisions

8.1 Amendments

Any changes, modifications, revisions, or amendments to this Agreement, which are mutually agreed upon by the parties to this Agreement, shall be incorporated by written instrument, executed and signed by both parties to this Agreement.

8.2 Applicable Law and Venue

The parties mutually understand and agree that the construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. If any dispute arises between the parties from or concerning this Agreement or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the ~~District Court of the State of Wyoming~~ Wyoming Chancery Court. The foregoing provisions of this paragraph are agreed by the parties to be a material inducement to the Foundation and to EWC in executing this Agreement. This provision is not intended, nor shall it be construed to waive EWC's sovereign/governmental immunity as provided in Wyo. Stat. Ann. §§ 1-39-101 (2023), *et seq.*, and all other applicable laws.

8.3 Assignment

Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Agreement without the prior written consent of the other party. The Foundation shall not use this Agreement, or any portion thereof, as collateral for any financial obligation without the prior written permission of EWC.

8.4 Audit/Access to Records

Subject to the requirements of paragraphs 7.3 and 9.0 of this Agreement, EWC and its employees and other agents shall have access to any books, documents, papers, and records of the Foundation which are pertinent to this Agreement and not protected by a

legal privilege.

The Foundation shall, immediately upon receiving written instruction from EWC, provide to any independent auditor, accountant, or accounting firm, all books, documents, papers, and records of the Foundation which are pertinent to this Agreement and not protected by a legal privilege, subject to the provisions of paragraph 7.3 of this Agreement, which shall apply to each person working for any such auditor, accountant or auditing firm. The Foundation shall cooperate fully with any such independent auditor, accountant, or accounting firm during the entire course of any audit authorized by EWC.

8.5 Availability of Funds

EWC's payment obligation is conditioned upon the availability of funds, which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services provided by the Foundation, the Agreement may be terminated or modified by EWC at the end of the period for which funds are available. EWC shall notify the Foundation at the earliest possible time of the services, which will be or may be affected by a shortage of funds. At the earliest possible time means at least thirty (30) days before the shortage will affect services or payment of claims if EWC knows of the shortage at least thirty (30) days in advance. No penalty shall accrue to EWC in the event this provision is exercised, and EWC shall not be obligated or liable for any future payments due or for any damages as a result of termination under this provision. This provision shall not be interpreted or construed to permit EWC to terminate this Agreement in order to acquire similar services from another party.

8.6 Compliance with Laws

The Foundation shall keep informed of and comply with all applicable federal, state or local laws and regulations in the performance of this Agreement.

8.7 Entirety of Agreement

This Agreement consisting of sixteen (16) pages, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, statements, representations and agreements, whether written or oral.

8.8 Force Majeure

Neither party shall be liable to perform under this Agreement if such failure arises out of causes beyond the control, and without the fault or the negligence of the nonperforming party. Such causes may include, but are not restricted to, Acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall only become effective if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the

nonperforming party. The parties intend and agree that EWC does not waive sovereign/governmental immunity by entering into this Agreement and specifically retains immunity and all defenses available to it pursuant to Wyo. Stat. Ann. §§ 1-39-101 (2009), *et seq.*, and all other applicable laws.

8.9 No Indemnification

Except as specifically set forth herein, there shall be no indemnification by one party of the other and each party agrees to be responsible and assume liability for its own wrongful or negligent acts or omissions, or those of its officers, agents or employees, to the fullest extent allowed by law.

Each party agrees to maintain reasonable coverage for such liabilities either through commercial insurance or a reasonable self-insurance mechanism, and the nature of such insurance coverage or self-insurance mechanism will be reasonably provided to the other upon request.

8.10 Notices

All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, facsimile, e-mail, or delivery in person. A party may change its address for notice hereunder by giving written notice to the other party.

8.11 Severability

If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, or if EWC is advised of any such actual or potential invalidity or unenforceability, such holding, or advice shall not invalidate or render unenforceable any other provision hereof. It is the express intent of the parties that the provisions of this Agreement are fully severable. Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

8.12 Sovereign/Governmental Immunity

EWC does not waive its Governmental/Sovereign Immunity by entering into this Contract and specifically retains all immunities and defenses available to it as a governmental entity pursuant to Wyo. Stat. Ann. §§ 1-39-101 (2023), *et seq.*, and all other applicable laws. EWC fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law, based on this Agreement. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of sovereign/governmental immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign/governmental immunity shall be construed in favor of sovereign/governmental immunity.

8.13 Termination

This Agreement may be terminated (a) by either party at any time without penalty, provided that written notice of such termination is furnished to the other party at least sixty (60) days prior to the effective date of termination. All services shall be completed during this sixty (60) day term.

8.14 Third Party Beneficiary Rights

The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to the Agreement and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.

8.15 Titles Not Controlling

Titles of paragraphs are for reference only and shall not be used to construe the language in this Agreement.

8.16 Waiver.

The waiver of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

8.17 Statement of Coordination

This Agreement is intended to contribute to the coordination of the mutual activities of the Foundation and EWC. To ensure effective achievement of the objectives of this Agreement, EWC and the Foundation officers and EWC board representatives shall hold periodic meetings to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.

8.18 Implied Covenants

By entering into this Agreement, the Parties acknowledge and accept that this Agreement includes the covenant of good faith and fair dealing. Furthermore, the Parties agree that the responsibilities and duties set forth herein are to be completed in a professional manner and in accordance with applicable professional standards.

8.19 Winding Up Upon Foundation Dissolution

Consistent with the provisions of the Foundation's Bylaws and its Articles of Incorporation, should the Foundation cease to exist or cease to be an IRC § 501 (c)(3) organization, the Foundation will transfer its assets and property to EWC or EWC's assignee. For purposes of this section, a corporate reorganization, merger, or consolidation or a renaming of the Foundation shall not constitute a cessation of

existence provided the Foundation, or its successor, is recognized as the affiliated foundation of EWC.

Signature Page

The parties to this Agreement, through their duly authorized representatives, have executed this Agreement on the dates set out below, and certify that they have read, understand, and agree to the terms and conditions of this Agreement.

The effective date of this Agreement is the date of the signature last affixed to this page.