



MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is entered into between Washburn University Foundation, 1729 SW MacVicar, Topeka, KS 66604, a not-for-profit 501(c)(3) corporation organized and existing under Kansas law, hereinafter “the Foundation”, and Sunflower Music Festival, a not-for-profit 501(c)(3) corporation organized and existing under Kansas law hereinafter “Sunflower,” to memorialize the agreement of the parties concerning their ongoing relationship.

IN CONSIDERATION of the mutual covenants hereinafter set forth, the parties agree as follows:

1. PURPOSE

The parties agree the purpose of the Memorandum of Understanding is to delineate the respective rights and obligations of the parties and define the relationship between the parties.

2. RELATIONSHIP BETWEEN THE PARTIES

The parties agree the relationship of the parties is between two separate and independent entities. There is not a joint venture, partnership, employer-employee relationship or any principal-agent relationship.

A. Sunflower is a not-for-profit corporation organized and existing under Kansas law and having as its general purpose to present an annual series of orchestra concerts, chamber evenings, educational projects, and other artistic events of the highest level.

B. The Foundation is a not-for-profit corporation organized and existing under Kansas law having as its purpose: (a) identifying and soliciting support for the benefit of Washburn University, its programs, staff and students; and (b) management of corporate and endowment assets.

C. The parties agree each shall be solely responsible for all its respective operational aspects, including, but not limited to

1. Budgeting and financial decisions;
2. Setting priorities and long-term plans for the entity;
3. Employment, compensation and evaluation of employees;

4. Management and oversight of all operations

3. COMMUNICATIONS BETWEEN ORGANIZATIONS

To best provide for a long-term relationship between the two organizations, a Joint Committee shall be established to provide a forum for systematic ongoing discussions regarding fundraising priorities and goals, resource needs and any other pertinent items relating to either party.

A. Joint Committee

1. The parties agree there shall be a Joint Committee comprised of:
 - a. the President of the Foundation;
 - b. the President of Sunflower;
 - c. the Treasurer of Sunflower;
 - d. the Artistic Director of Sunflower;
 - e. the Chair of the Sunflower Endowment Committee
 - f. the Foundation Gift Officer assigned to the Sunflower Endowment Committee, and
 - g. the two designees appointed by Washburn University to be the primary liaisons for Sunflower.
2. The duties of the Joint Committee shall include, but not be limited to:
 - a. an annual meeting to be held during the first calendar quarter of each year to review this Memorandum of Understanding and to discuss and/or propose improvements in the relationship or revisions to this Memorandum of Understanding;
 - b. monitoring the relationship of the parties;
 - c. resolving questions and concerns of the respective entities;
 - d. discussing fundraising priorities for Sunflower; and
 - e. an annual review to be held after Sunflower's Annual Meeting and no later than the end of the 3rd quarter of the calendar year.

4. FOUNDATION RESPONSIBILITIES

The primary functions of the Foundation under this Memorandum of Understanding and as permitted in its Memorandum of Understanding with Washburn University are identifying and soliciting financial support and effectively managing endowment assets designated for the benefit of Sunflower. The Foundation agrees it shall:

- A. in coordination with the Sunflower Board of Directors, advise, plan, coordinate and execute development activities in support of the Sunflower consistent with University priorities established by its Board of Regents;

- B. adhere to the Foundation gift-management and acceptance policies for all gifts to Sunflower;
- C. acknowledge and issue receipts for all gifts for Sunflower and provide appropriate recognition and stewardship of such gifts;
- D. receive the written approval of a duly authorized Sunflower representative and as appropriate a Washburn University representative before accepting gifts with restrictive terms requiring
 - additional allocation of resources to maintain the gift or satisfy the restriction,
 - placement on the Washburn University campus,
 - departure from established or required University policies and procedures;
- E. receive, hold, manage, invest and disburse contributions of cash, securities, and other forms of property investing gifts contributed in the form of planned and deferred gift instruments according to established policies.

5. THE FOUNDATION DISBURSEMENT OF FUNDS TO SUNFLOWER

The parties agree:

- A. The Foundation is the primary depository of private endowment gifts for the benefit of Sunflower, its programs and staff and will disburse funds to the designated Sunflower accounts within the University in compliance with applicable laws, university and the Foundation policies, and gift agreements;
- B. The Foundation's disbursements from its assets to the Sunflower accounts at the University must be reasonable business expenses which:
 - support Sunflower;
 - are consistent with donor intent; and,
 - comply with applicable law;
- C. The Foundation will make available for distribution computed earnings, as determined according to the approved Foundation Investment Policy, from the endowed funds at least annually on a date mutually agreed upon by the two parties, but not earlier than March 1.

In accordance with section VI.B. of the Foundation Investment Policy, "the annual distribution from the [endowment] Fund is to be relatively consistent and predictable. Spending, in addition to budgeted operating expenses, is calculated at 5% of the twenty-one quarter moving average of the Fund's market value;"

D. Distributions from restricted expendable or endowment funds must be expended by Sunflower in accordance with the terms of the gift agreement creating the endowment. Appropriate documentation and authorization supporting the restricted spending are required for disbursement and/or transfer of restricted funds;

6. THE FOUNDATION OPERATIONAL FUNDING AND ADMINISTRATION

The parties agree:

In accordance with the approved Memorandum of Understanding between Washburn University and the Foundation, the Foundation has the right to use a reasonable amount of income and realized and unrealized capital gains from all restricted and unrestricted endowed funds and all other funds held by the Foundation, whether endowed or expendable, for the Foundation operations and services subject to the provisions of the approved Memorandum of Understanding with Washburn University.

This provision will apply in the same manner to all funds managed and invested for the benefit of Sunflower. The Foundation's annual operating budget is approved annually by the Board of Directors of the Foundation and all funds bear a proportionate share of the operating and administrative costs as approved.

7. SUNFLOWER RESPONSIBILITIES

Sunflower agrees it shall:

A. Permit the Foundation the right to use Sunflower's logo, seal and other symbols and marks in conjunction with University-sanctioned fund-raising and/or development projects; provided, however, the Foundation shall not have the right or authority to delegate or assign the use of any of such Sunflower marks or symbols without the express written approval of Sunflower's President. The Foundation will otherwise operate under its own seal, logos, symbols and marks and shall not use Sunflower's seal or other marks in the promotion of the Foundation business and activities;

B. Expend restricted expendable or endowment funds in accordance with the terms of the gift agreement creating the endowment and create appropriate documentation and authorization supporting the restricted expenditures.

8. AUDITS, RECORDS AND REPORTING

A. The Foundation shall provide the Sunflower a copy of the Foundation's annual audit report not later than six (6) months following the close of the party's fiscal year.

B. Each party agrees that representatives of the other may inspect its records and accounts at reasonable times during regular business hours; provided, however, such inspection of the Foundation records, data and information shall not include the right to inspect records pertaining or relating to individual private donors. However, the Foundation shall provide Sunflower information about the donors to any Sunflower funds and the amount of such gifts or endowment funds as permitted by the individual donors. This is permissible only as Sunflower is a private, not-for-profit corporation not subject to FOIA.

C. The Foundation will provide Sunflower access to its data and records on a strictly need-to-know basis in accordance with applicable laws, the Foundation policies, and guidelines. The Foundation and Sunflower agree that Sunflower at no time shall possess, keep, or maintain any the Foundation record except those records which the Foundation designates for release.

D. The Foundation will provide Sunflower quarterly reports of the investment performance.

9. CONFIDENTIALITY

A. The parties agree that, except as provided otherwise in section 8 of this Memorandum of Understanding, the Foundation records, particularly records pertaining or relating to donors, are private and confidential and shall be maintained by the Foundation.

1. The Foundation agrees it shall keep confidential any information, data or record it receives from Sunflower.

10. INDEMNIFICATION

The parties agree to indemnify and hold harmless the other party, its governing board, officers, agents, employees and students in their official capacities from and against any and all claims, damage, liability, injury, expense, demands, causes of actions, judgments, including court costs and attorney's fees (hereafter "loss") arising out of or resulting from the gross negligence of its officers, agents or employees. In the event such loss is proximately caused by the acts of both parties or their officer's agents or employees, each shall be responsible for its proportionate share of claimant's damages under the laws of the state of Kansas. The parties agree this provision shall survive the termination of this Memorandum of Understanding.

11. NOTICE

The parties agree that notice to either party of this agreement must be in writing signed by the party giving it and shall be deemed given when mailed postage prepaid by U.S. Postal Service, first class, certified or express mail, or other overnight mail service or hand delivered when addressed as follows:

To Sunflower Music Festival President Washburn University of Topeka 1700 College Topeka, KS 66221	To Foundation President Washburn University Foundation 1729 MacVicar Topeka, KS 66604
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or to such other addressee as may be hereafter designated in writing or made by amendment to this Memorandum of Understanding. All such notices shall be effective only when received by the addressee.

12. GOVERNING LAW

The parties agree the laws of the state of Kansas shall govern this Memorandum of Understanding and that any suit or cause of action by either party against the other shall be filed in the Third Judicial District of the state of Kansas.

13. AGREEMENT COMPLETE

The parties agree that this Memorandum of Understanding constitutes the entire agreement of the parties and that no prior agreement or representation, written or oral, shall be binding or of any force or effect. Further, this Memorandum or Understanding may not be amended, modified, altered or enlarged except by a writing signed by the duly authorized representatives of the parties hereto.

14. AGREEMENT BINDING

The parties agree that this agreement shall be binding upon the successors and legal representatives of the parties hereto. Neither party shall assign this Agreement nor any of their respective rights, obligations or interest in it.

15. TERM

The parties agree the term of this Memorandum of Understanding shall be indefinite.

16. TERMINATION

The parties agree this Memorandum of Understanding may be terminated with or without cause upon sixty (60) day written notice to the other. Sixty (60) days

following notice of termination, this Memorandum of Understanding shall terminate as though such date were originally fixed as the date of termination. Notwithstanding termination of this Memorandum of Understanding, the Foundation will continue to be required to abide by the restrictions of any gifts or endowments it possesses and to make distribution of such funds as required by the respective gift instruments.

IN WITNESS HEREOF, the duly authorized representatives of the parties have hereunto set their hand on the date and year written.

Sunflower Music Festival

Foundation

By: _____
President
Sunflower Music Festival

By: _____
President,
Foundation

Date: _____

Date: _____

By: _____
Treasurer,
Sunflower Music Festival

By: _____
Chairperson,
Board of Trustees

Date: _____

Date: _____