

DEPARTMENT OF THE NAVY
NAVAL POSTGRADUATE SCHOOL
NPS FOUNDATION INC
MONTEREY CA 93943-5189

NPS FOUNDATION INC
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MEMORANDUM OF UNDERSTANDING
BETWEEN
THE NAVAL POSTGRADUATE SCHOOL
AND
THE NAVAL POSTGRADUATE SCHOOL FOUNDATION, INC.

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Ref: (a) DoD 5500.7-R (Joint Ethics Regulation)
(b) DODI 1000.15 (Support for Non-Federal
Entities on DoD Installations)
(c) CNICINST 11000.1 (Non-Federal Entities
on Navy Installations)
(d) BUPERSINST 1710.11C (Operation of Morale, Welfare and
Recreation Activities)
(e) SECNAVINST 4001.2J

1. Purpose. To assist the Naval Postgraduate School (hereinafter referred to as "NPS") in meeting the requirements of references (a) through (c). This Memorandum of Understanding (MOU) establishes an understanding between NPS and the Naval Postgraduate School Foundation, Inc. (hereinafter referred to as "the Foundation") for cooperation and support in the accomplishment of the mission of NPS. This MOU also establishes a process for the Foundation to request from NPS a list of the school's priorities that provide a "margin of excellence" in the education of students, but that cannot be met with appropriated funds.

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2. Background

a. The authority for NPS is set out in 10 U.S.C. § 7041, et. seq. NPS exists to increase the combat effectiveness of the Navy and Marine Corps by providing post-baccalaureate degree and non-degree programs in a variety of sub-specialty areas not available through other educational institutions. NPS also supports the DON through continuing programs of naval and maritime research and through the maintenance of an expert faculty capable of working in, or as advisors to, operational commands, laboratories, systems commands, and headquarters activities of the Navy and Marine Corps.

b. The Foundation is a non-Federal entity (NFE), separate and distinct from NPS, as defined in section 1-217 of reference (a). The Foundation has been providing support to NPS for over 40 years. It is a not-for-profit 501(c)(3) (Tax ID: 23-7098729) organization whose primary purpose is to support the students, faculty, and staff of NPS above the level of appropriated funds. Funding from NPS Foundation provides a margin of excellence in support of strategic institutional priorities identified by NPS leadership.

c. NPS recognizes the importance and benefits of Foundation support for NPS and its programs. In order to govern the relationship between NPS and the Foundation, the parties enter into the following MOU.

3. Responsibilities of NPS. NPS will:

a. Appoint at least one NPS staff member as a non-voting liaison to the Foundation in accordance with reference (a). NPS liaison(s) will serve as the primary point of contact between NPS and the Foundation on all matters relating to the relationship. NPS liaison(s) will represent the views of the Department of Defense to the Foundation. The views expressed by the liaison(s) do not bind DoD or the Department of the Navy to take any action.

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b. Upon written request from the Foundation, provide a written response through NPS liaison(s) communicating NPS plans, objectives, and priorities developed through NPS strategic planning process. NPS must communicate strategic priorities without soliciting, or appearing to solicit, specific gifts from the Foundation, as discussed in more detail below.

c. Upon proper acceptance by appropriate authority pursuant to reference (e), receive and utilize restricted gift funds from the Foundation subject to such terms, conditions, or limitations as are imposed by the donor, by law, or pursuant to court order or other legal determination and communicated by the Foundation, to the extent that such gifts:

(1) Are in best interest of NPS, as determined by the NPS President; and

(2) Do not violate applicable state or federal laws or subject NPS to substantial risk of litigation that would exceed the benefits received by the funds, as determined by NPS; and

(3) Do not violate the policies or procedures of NPS and the Department of the Navy.

d. Upon proper acceptance by appropriate authority pursuant to reference (e), receive and utilize such unrestricted gift funds as may be provided by the Foundation to resource emergent, unbudgeted initiatives, projects, and/or programs that directly benefit the mission of NPS. The NPS President, with advice from ethics counsel, shall issue a written determination that the purpose of the expenditure is not inconsistent with the terms of the gift and that such expenses are necessary to effectively carry out the agency's authorized functions.

e. Place a link on NPS Internet and Intranet website which

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connect directly to the Foundation website, ensuring appropriate disclaimer language is used.

f. Review and support as appropriate Foundation requests for support to Naval Support Activity Monterey (NSAM) permitted by references (a)-(c).

g. Prohibit the following:

(1) Allowing Foundation personnel to perform inherently governmental functions such as the selection or non-selection of individuals for Federal Government employment, including participating in the interview of individuals for employment.

(2) Allowing any NPS employee, student, or staff member to receive reimbursement for expenses related to official duties from the Foundation. All requests for and receipts of funds from the Foundation shall only be made as set forth in this MOU. This prohibition shall not apply when an NPS employee, student, or staff member is seeking reimbursement for expenses incurred solely as a member of, and for the benefit of, a student morale group sponsored by the Foundation, where the expense is related to the charter and purpose of such student group.

(3) Divulging Personally Identifiable Information (PII) to the Foundation, unless the owners of the PII have provided written consent.

(4) Using US Government vehicles to carry out Foundation business.

(5) Using NPS servers, systems, or e-mail addresses by the Foundation.

(6) Disseminating information regarding Foundation fundraisers or membership drives, including information regarding specific Foundation store sales.

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(7) Distributing Foundation promotional items at NPS conferences and other events.

4. Responsibilities of the Foundation. The Foundation will:

a. Support the mission and strategic goals of NPS in a way that brings credit to both institutions.

b. Remain responsible for the performance and oversight of all aspects of its operations in accordance with its Bylaws.

c. Comply with all DOD and DON regulations while operating on board NSAM.

d. Communicate to, and make any requests of, NPS through the official NPS liaison(s) appointed by NPS.

e. With respect to fundraising, provide such information concerning sources of donor gifts as may be requested by NPS to enable NPS to perform gift analysis consistent with Department of the Navy guidance.

f. Provide annually a copy of Internal Revenue Service Form 990 filed by the Foundation.

g. With respect to Transfer of Funds:

(1) In accordance with the Foundation's Bylaws, offer such annual support to NPS as it is prudently able to provide based on the Foundation's identified available funding.

(2) Make written requests to NPS for anticipated programmatic support requirements. Requests will be made annually, with updates requested at least quarterly during the year.

(3) Upon formal acceptance by the Department of the Navy, transfer gift funds to NPS in compliance with applicable laws, NPS policies, and the terms of any pertinent gift agreements

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(4) Disclose all terms, conditions, or limitations imposed on a gift by the donor when distributing gifts funds to NPS.

(5) Prohibit reimbursement directly to any NPS employee, student, or staff member for expenses presented to the Foundation. All requests for and receipts of funds from the Foundation shall only be made as set forth in this MOU.

5. Gifts from the Foundation

a. NPS employees are prohibited from soliciting gifts (5 C.F.R. 2635.202(a), SECNAVINST 4001.2J(6)(b), DoD FMR, Vol 12, Ch 30, 300502). Requests for donations initiated by NPS to the Foundation would run afoul of these regulations. However, a response to a request for school needs initiated by the Foundation is not a prohibited solicitation. Such actions are designed to provide the Foundation with sufficient information to perfect its gift offer. However, to ensure that NPS personnel do not inadvertently act in a manner that may be construed as prohibited solicitation, communications between NPS and the Foundation about gifts will only be made through NPS liaison(s) to the Foundation pursuant to this MOU.

b. Each year the Foundation offers a significant amount of monetary and in-kind support to NPS. Recognizing the need to learn about the future needs of NPS, the Foundation will send NPS a letter at least quarterly asking for input on what needs for support NPS has in the upcoming year. At its sole discretion, the Foundation may also choose to submit such formal requests more or less frequently. NPS liaison(s) will provide a response to the Foundation on how NPS could utilize support. The Foundation then provides a list to NPS liaison(s), which the NPS President acknowledges as future gifts through the proper gift acknowledgement procedures via the Under Secretary of the Navy. When NPS is ready to accept one of the previously-acknowledged future gifts, it notifies the Foundation and formally accepts the individual items.

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6. Foundation Fundraising

a. The Foundation requests, receives and administers funds, securities, and gifts-in-kind from donors to support NPS' academic programs and facilities. Interaction between NPS employees and the Foundation is appropriate. However, NPS employees may not actively and visibly participate in their official capacities in the solicitation portion of fundraising (defined as promotion, production, or presentation activities specifically developed and delivered to solicit funds for NPS Foundation use). (5 C.F.R. 2635.808(a)(2)).

b. Upon approval, NPS employees may give an official speech at a Foundation fundraiser. An official speech is one given in the employee's official capacity on subject matter that relates to his official duties, provided that the NPS President, with advice from ethics counsel, has determined that the event at which the speech is to be given is an appropriate forum for the dissemination of the information to be presented and provided that the employee does not request donations or other support for the Foundation (5 C.F.R. 2635.808(a)(3)). Such presentations by school leaders have important public relations value by providing information about NPS and the vision for the school's future to supporters and alumni. However, the Foundation will not request donations from attendees in the presence of NPS representative.

7. Engagement

a. The Foundation relies upon access to students and faculty in order to disseminate information regarding NPS activities to the general public and potential donors.

b. All information furnished by NPS employees and students for such purposes will be limited to publicly releasable information.

c. As projects arise, the Foundation will contact NPS liaison(s) for a referral to a appropriate faculty members or

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students. These projects may include, but are not limited to, building case studies regarding NPS research and securing speakers for approved events.

d. If an NPS employee or student has any questions about a particular project, they will contact NPS liaison(s) for guidance.

8. Third Party Beneficiaries. Nothing herein shall make any person or entity a "third party beneficiary" to this MOU, and no third party is permitted to use this MOU to create a cause of action for or against the Foundation.

9. Review, Modification, and Termination

a. This MOU shall be reviewed by NPS and the Foundation every three years and modified as deemed necessary.

b. This MOU may be modified only with the written concurrence of both NPS and Foundation.

c. Either party may terminate this MOU upon written notice to the other party.

d. The Foundation shall immediately notify NPS if the Foundation ceases to exist or ceases to qualify as a tax-exempt organization under Internal Revenue Code section 501 (c) (3). Consistent with provisions of the Foundation's by-laws and articles of incorporation, if the Foundation dissolves, ceases to exist or ceases to qualify as a tax-exempt organization under Internal Revenue Code section 501(c) (3), the Foundation will transfer its assets and property to one of the following in accordance with applicable law and donor intent (in order of priority):

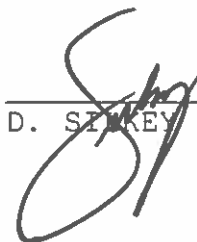
(1) A reincorporated successor foundation recognized by NPS as its Foundation according to Board of Directors policies and procedures, or

(2) NPS, when properly accepted in accordance with DoD and DON gift acceptance procedures.

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10. Assignment and Amendments. The Foundation agrees not to assign or transfer the Foundation's responsibilities under this MOU without the prior written consent of NPS. Any amendments to this MOU shall be in writing.

11. Effective Date. This MOU shall take effect upon the signature of both parties to this MOU.



D. SEKEY



R. A. ROUTE