

## **Amended and Restated Memorandum of Understanding**

This Amended and Restated Memorandum of Understanding (the "Memorandum") is made effective as of this 22nd day of February, 2013, (the "Effective Date") by and between CHARLES KOCH FOUNDATION (f/k/a Charles G. Koch Charitable Foundation), a Kansas nonprofit corporation (hereinafter "CKF"), and THE FLORIDA STATE UNIVERSITY BOARD OF TRUSTEES, a public body corporate of the State of Florida, for and on behalf of The Florida State University, including its College of Social Sciences (hereinafter "FSU"), and THE FLORIDA STATE UNIVERSITY FOUNDATION, INC., a direct support organization of The Florida State University and a Florida nonprofit corporation (hereinafter "FSUF"). CKF, FSU, and FSUF are sometimes referred to herein individually as a "Party" and collectively as the "Parties". It is contemplated by the Parties that other third party donors will contribute funds to support the programs set forth in this Memorandum ("Donor Partners") and will hereinafter become bound by the terms of this Memorandum by executing an agreement in the form substantially similar to that attached as Exhibit A ("Donor Agreement").

### **RECITALS**

A. CKF is a private foundation that is exempt from Federal income taxation under section 501(c)(3) of the Internal Revenue Code (the "Code"). FSU is a higher education institution and part of the state university system of the State of Florida, that is exempt from Federal income taxation under section 501(c)(3) of the Code. FSUF is a direct support organization for FSU that is exempt from Federal income taxation under section 501 (c)(3) of the Code.

B. FSU, FSUF, and CKF desire to advance and expand research and teaching efforts relating to the economic impact of institutions and free enterprise and to strengthen and extend publication, dissemination, and continued academic and public knowledge of the causes, measurement, impact, and appreciation of economic institutions and free enterprise.

C. The Parties desire to enter into this Memorandum to set forth their understanding with respect to establishing a Program for the Study of Political Economy and Free Enterprise as described in Section 2 ("SPEFE Program") and a Program for Excellence in Economic Education ("EEE Program") within the Gus A. Stavros Center for the Advancement of Free Enterprise and Economic Education ("Stavros Center") that promotes sound economic education and research. Pursuant to the terms of this Memorandum and any Donor Agreement, the Parties intend that funds will be contributed to support the SPEFE Program for five professorship positions as described in Section 3 (the "Professorship Positions"), to support the EEE Program for positions in economic education as described in Section 4 ("Teaching Specialist Position") and to support educational programs for undergraduate students as described in Section 5 (the "Undergraduate Program") at FSU.

D. This Memorandum sets forth the intent, structure, recruitment, and funding procedures to support the SPEFE and EEE Programs, the Professorship Positions, Teaching Specialist Position and the Undergraduate Program (the SPEFE Program, the EEE Program, the

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Professorship Positions, Teaching Specialist Position and the Undergraduate Program are collectively referred to herein as, the "Affiliated Programs and Positions"), and to clarify the relationship between CKF, FSU faculty, Donor Partners and relevant departments of FSU as it relates to these Affiliated Programs and Positions.

## **TERMS OF AGREEMENT**

The funds provided by CKF pursuant to this Memorandum and any Donor Agreement between the Parties and potential funds from other Donor Partners who accept the terms of this Memorandum relating to the Affiliated Programs and Positions as described herein are subject to the following terms and conditions.

### **1. Objectives and Purposes.**

(a) The purpose of the Affiliated Programs and Positions is to advance the understanding and practice of those free voluntary processes and principles that promote social progress, human well-being, individual freedom, opportunity and prosperity based on the rule of law, constitutional government, private property and the laws, regulations, organizations, institutions and social norms upon which they rely. These goals will be pursued by supplementing the academic talent that is currently at FSU to create a strong program that will focus on building upon and expanding research and teaching efforts related to economic institutions and political economy.

(b) Understanding that effective achievement of the objectives stated in Section 1(a) above requires a concentration of complementary and cooperative talents and skills, it is accepted that FSU will make every effort to recruit and maintain faculty and individuals in the Affiliated Programs and Positions outlined in this Memorandum who support the objectives stated in Section 1(a) above and who have demonstrated or show the promise of working effectively in collaborative efforts to advance those objectives and whose research promises to advance those objectives and compliment, inform and build upon FSU's existing strengths in law and economics, institutions, and property rights as they relate to and inform the foundations of prosperity, social progress and human well-being.

**2. Program for the Study of Political Economy and Free Enterprise.** The FSU College of Social Sciences agrees to create the SPEFE Program and the EEE Program within the Stavros Center to build upon and advance research, publication, dissemination, and public knowledge of the role and importance of economic institutions and the study of political economy. CKF is supportive of these efforts, and the Parties agree that the activities of the SPEFE Program and the EEE Program will include but not be limited to: (a) yearly production and publication of high-quality academic research focusing on economic institutions and political economy, (b) economic education efforts aimed at the broad dissemination of research related to economic institutions and political economy, (c) support of faculty and students advancing research into and the dissemination of economic institutions and political economy, and (d) collaboration and cooperation with other centers and organizations working to advance complementary research and activities related to economic institutions and political economy. The Parties agree that individuals appointed to Professorship Positions described in this

Memorandum will hold an affiliation with both the FSU Economics Department and the SPEFE Program, and the Teaching Specialist will be affiliated with both the FSU Economics Department and the EEE Program. It is the Parties' intention that as soon as possible individuals appointed to new positions affiliated with the SPEFE Program will have office space that is contiguous and dedicated to the purposes of the SPEFE Program. The Parties acknowledge that the financial details regarding the SPEFE Program will be clarified in future Donor Agreements but the Parties agree that the budget for the SPEFE Program and EEE Program will not exceed the amounts set forth in Section 11. Notwithstanding the above, the Parties further acknowledge that FSU may raise funds in excess of the amounts set forth in Section 11, and nothing in this Memorandum will be construed as limiting FSU's ability to raise such additional amounts for the SPEFE, Program and the EEE Program in excess of the budget amount set forth in Section 11.

### 3. **Professorship Positions.**

(a) Description. The Parties intend to staff the SPEFE Program with five Professorship Positions as set forth below.

- (i) *Advanced Professorship Positions*. At least three of the five Professorship Positions will be filled with individuals who will begin with the rank of senior assistant or associate professor and will be recruited for tenured or tenure-track positions. The individual who fulfills the requirements of a senior professor will begin employment with tenure, having satisfied all FSU requirements in that regard.
- (ii) *Assistant Professorship Positions*. Up to two other Professorship Positions will begin, at a minimum, with the rank of assistant professor. This is a tenure-track position, and it is expected that this individual will show promise of earning tenure at FSU in the normal timeframe.





FSU agrees to recruit individuals to hold Professorship Positions who support the Objectives and Purposes set forth in Section 1(a) above, and who demonstrate the ability to work effectively in collaborative efforts to advance those Objectives and Purposes, and whose research promises to advance those Objectives and Purposes and compliment, inform, and build upon FSU's existing strengths in law and economics, institutions, and property rights as they relate to and inform the foundations of prosperity, social progress, and human well-being. Notwithstanding other qualifications, an individual who is a "disqualified person" as to CKF as that term is defined under Section 4946(a)(1) of the Internal Revenue Code (the "Code") is not eligible to hold a Professorship Position or any other position in an Affiliated Program and Position, without CKF's prior written consent.


(b) The Professorship Positions will be recruited and hired in a manner consistent with the FSU Faculty Handbook. 

(c) FSU agrees to assume full responsibility for the continued maintenance

and funding for the Professorship Positions once the Project Period (as set forth in Section 11) for each Professorship Position has expired.

(d) Selection Process. The selection of the Professorship Positions will be made in accordance with the following procedure:

- (i) All candidates for the Professorship Positions must be nominated by the Executive Committee of the FSU Department of Economics (the "Executive Committee"). The customary selection procedures of the Executive Committee will be used to nominate such candidates.
- (ii)  The Executive Committee will notify the Dean of the College of Social Sciences and Public Policy of their selection of a candidate for a position for which there may be funding available pursuant to a Donor Agreement.
- (iii)  After the Dean has approved the selection and the department extends an offer to the chosen candidate, the Dean or his department representative will send information regarding the candidate to CKF together with a proposal to fund the position as a professorship provision under 3 (a) above. The decision of CKF on the funding proposal will under no circumstances jeopardize the offer to the candidate approved by the Executive Committee and the Dean. Nor will the approval of the Dean create an obligation for CKF to provide any funding under this Memorandum or a Donor Agreement.
- (iv) Employment offers to candidates for the Professorship Position will be made in accordance with FSU's customary hiring procedures with the approval of the Dean of the College of Social Sciences, applicable Department Chair, and the FSU Provost, provided the review and approval process set forth in (iii) above has been satisfied.
- (v) The candidates for Professorship Positions will be subject to the same rigorous standards and procedures as are typically required for similar positions at FSU as outlined in the FSU Faculty Handbook.
- (vi)  In the event CKF decides not to agree to a proposal to fund a position under the process stated in (iii) above, CKF may in its sole discretion cease all obligations under this Memorandum or any Donor Agreement pertaining to the funding of that particular Professorship Position. 

- (vii) The above selection procedure for each Professorship Position will exist for a term of ten years ("Term") from the date that the Professorship Position is first filled. In the event a Professorship Position becomes vacant for any reason during the Term, a new candidate will be selected for the vacant position in accordance with the procedures set forth in this Memorandum. FSU intends that the selection process after the expiration of the Term should be consistent with and remain faithful to the Objectives and Purposes set forth in Section 1(a) above. However, at the end of the Term, FSU may implement a different selection process.
- (e) Performance Obligations of Professorship Positions.
  - (i) Individuals holding Professorship Positions agree to support the Objectives and Purposes as set forth in Section 1(a) above and to complete the following activities in accordance with these Objectives and Purposes.
  - (ii) The objectives of the Professorship Positions will be accomplished through research, teaching, publishing, print and electronic media, and other means as may reasonably be deemed to comport with the mission of FSU and the SPEFE Program.
  - (iii) *Reporting.* At the conclusion of each academic year, the Economics Department and Stavros Center will provide the SPEFE-EEE Advisory Board with a brief summary of the principal activities and accomplishments of the SPEFE and EEE Programs in the previous year, including information on publications, presentations, courses taught, students supervised, and outreach activities. The report will also include information about how those activities have advanced the Objectives and Purposes set forth in Section 1(a) above, and about plans for the subsequent academic year.
  - (iv) *Reviews.* Individuals holding the Professorship Positions will be subject only to all existing department policies regarding performance reviews. 

#### **4. Teaching Specialist Position.**

- (a) FSU will hire one (1) individual for the Teaching Specialist Position to teach economics courses, primarily at the undergraduate level, such as principles of economics and courses in political economy related to the advancement of the purposes of this Agreement (as detailed in the Objectives and Purposes set forth in Section 1(a) above).





(b) The selection of the Teaching Specialist Position will be determined by the Chair of the Economics Department and the Dean of the College of Social Sciences in consultation with the SPEFE-EEE Advisory Board.


(c) Funding for the Teaching Specialist Position may be provided by a Donor Partner pursuant to the terms of a separate Donor Agreement in the form substantially similar to that attached as Exhibit A.

(d) The Parties intend that the Teaching Specialist Position will be funded by payments consisting of five installments, the first installment being payable at the end of the first month in which the individual holding the Teaching Specialist Position begins full-time employment at FSU. Each of the subsequent four payments for the Teaching Specialist Position shall be payable on each of the next four anniversary dates of the first installment described herein with annual renewal dependent upon satisfactory evaluation of the FSU Economics Department and the SPEFE-EEE Advisory Board that the individual is advancing the Objectives and Purposes set forth in Section 1(a) above.

## **5. Undergraduate Program.**

(a) The creation of the Undergraduate Program to enrich and advance the studies of undergraduate students in economics is considered an integral part of advancing the Objectives and Purposes set forth in Section 1(a) above. Accordingly, the Economics Department will encourage and support the creation of an Economics Club which will be a registered student organization (RSO) at FSU. 

(b) The faculty advisor, as required by rules governing RSOs, will be chosen by the students but the SPEFE and EEE faculty are expected to participate in the activities of the Economics Club and serve as advisor if requested to do so. 

(c) A report on the activities of the Undergraduate Program will be included in the summary of activities that is provided to the SPEFE-EEE Advisory Committee under Section 3 (e) (iii). 

**6. Administrative Costs to Establish and Support the SPEFE and EEE Programs.** Funds outlined in this or a future Donor Agreement may be provided to alleviate the administrative costs that will be required to establish and develop the SPEFE and EEE Programs and to hire new faculty. These funds will be allocated by the College of Social Sciences Dean and the Economics Department Chair, in consultation with CKF.

## **7. SPEFE-EEE Program Advisory Board.**

(a) In order to preserve and safeguard the philanthropic and educational intent of CKF, its Donor Partners, as well as the educational objectives of FSU, an advisory board (the "SPEFE-EEE Advisory Board") will be created consisting of three members. This committee will consist of two faculty members of the Economics Department and one CKF representative who will be chosen by CKF in consultation with the Chair of the Economics Department. The



SPEFE-EEE Advisory Board will have the responsibility of reviewing the administration and compliance of this Memorandum. In doing so it will have the right to:

- (i) Consult with the Executive Committee's members, representatives of CKF, and FSU faculty regarding the qualifications of candidates for any Professorship Position and any other Affiliated Programs and Positions.
- (ii) Discuss with CKF representatives the appointment of a candidate for any Professorship Position and any other Affiliated Programs and Positions, and any other matters relating to carrying out the Objectives and Purposes set forth in Section 1(a) for which the Professorship Positions and any other Affiliated Programs and Positions were established.
- (iii) Make periodic assessments of the performance of the SPEFE and EEE Programs and report these assessments to FSU and CKF.
- (iv) Ensure compliance with the terms of this Memorandum through appropriate administrative or legal channels.
- (v) Undertake any other responsibilities detailed in this Memorandum, so long as they do not infringe on the authority, mission, or rules of FSU.
- (vi) FSU agrees to take the input of the SPEFE-EEE Advisory Board into consideration when evaluating the performance of the SPEFE and EEE Programs.

(b) The decision rule of the SPEFE-EEE Advisory Board in all matters will be unanimous vote of all three members. The term of appointment for the SPEFE-EEE Advisory Board members will be two years, with the possibility of reappointment. In the event that a board member is unable or unwilling to fulfill their obligations to the satisfaction of CKF, the appointing party will have the right to name a replacement as outlined above.

**8. Tax-Exempt Status.** FSU confirms that it is an organization that is currently recognized by the Internal Revenue Service (the "IRS") as a public charity under sections 501(c)(3) and 509(a)(1),(2) or (3) of the Code. FSU further agrees to inform CKF immediately of any change in, or IRS proposed or actual revocation (whether or not appealed) of, its tax-exempt status described above.

**9. Tenure.** FSU agrees that the individuals holding the Professorship Positions will have the same rights as all other FSU faculty members as set forth in the FSU Faculty Handbook.

**10. Financial Details and Payment Schedule.** Financial details regarding dollar amounts for each Professorship Position, the SPEFE and EEE Programs, and any other Affiliated Programs and Positions will be clarified by future Donor Agreements not to exceed the amounts set forth in Section 11 below.

(a) Payment schedule for yearly amounts and dates upon which funds will be released for the following year will be specified in future Donor Agreements between CKF, other Donor Partners and FSU. Pending satisfactory progress toward the goals of this Memorandum, FSU is encouraged to seek renewal of funding for the Affiliated Programs and Positions beyond the Project Period set forth in Section 11 of this Memorandum to support continued efforts to advance the Objectives and Purposes of this Memorandum set forth in Section 1(a). Approval of such additional funding will be at the sole discretion of CKF.

(b) Subject to the terms of this Memorandum, CKF intends to provide funds equal to \$1.5 million ("Proposed Funding"). The specific terms and conditions of the Proposed Funding and the allocation to Affiliated Programs and Positions will be set forth in a separate Donor Agreement. In addition to the Proposed Funding, CKF will assist FSU in identifying Donor Partners who are willing to support the Affiliated Programs and Positions identified in this Memorandum. CKF will use reasonable efforts to assist FSU in securing additional funding to support the Affiliated Programs and Positions but does not represent or guarantee that its efforts will secure such funding and shall not be liable for the failure of FSU to obtain any additional funding.

**11. Proposed Budget**

<u>Program</u>	<u>Project Period</u>	<u>Aggregate Cost</u>
2 Assistant Professorship Positions	6 years	\$2.097 million
3 Advanced Professorship Positions	6 years	\$3.455 million
Administrative Costs	4 years	\$105,000
Post-Doctoral Program	1-4 years	\$300,000
Teaching Specialist Position	5 years	\$544,000
Undergraduate Program	3 years	\$90,000
TOTAL		\$6.591 MILLION

**12. Right to Modify or Revoke.** In order to preserve and safeguard the philanthropic and educational intent of CKF, CKF reserves the right to discontinue or revoke any part of this Memorandum (including withholding any amounts to be made under any Donor Agreement to which CKF is a party regarding the Affiliated Programs and Positions), if, in CKF's reasonable discretion, such action is necessary: (a) because FSU has materially breached any of the terms and conditions of this Memorandum; (b) to protect the charitable purposes of CKF; or (c) to comply with any law or regulation applicable to FSU or to CKF. Additionally, CKF reserves the right to discontinue or revoke any part of this Memorandum (including withholding any amounts to be made under any Donor Agreement to which CKF is a party regarding the Affiliated Programs and Positions), subject only to continued payments for any positions for which FSU has already made contractual commitments and for which CKF has already expressly approved in writing the funding for the position associated with the contractual commitment through a separate Donor Agreement between the Parties, and then



only for the amount that CKF or a Donor Partner previously have agreed to provide, if in CKF's reasonable discretion, such action is necessary to protect the Objectives and Purposes set forth in Section I(a) above. Modifications to this Memorandum may be requested by the Parties, as needed, to meet the expressed intent and purpose of this Memorandum. Any proposed modifications must be in writing and agreed to by the Parties.

**13. Reporting.** FSU will provide CKF with information, reports and documents as CKF may request and will allow CKF and its representatives to have reasonable access during regular business hours to files, reports, accounts, or personnel that are associated with this Memorandum, the Professorship Positions for the purposes of making such financial reviews, verifications, or evaluations as CKF deems necessary or appropriate, subject to the privacy rules that govern Florida State University.

**14. Publicity.** FSU will allow CKF to review and approve the text of any proposed publicity which includes mention of CKF. FSU agrees to allow CKF to include information regarding the Professorship Positions and any other Affiliated Programs and Positions, and any information or materials about FSU and its activities in CKF's reports, newsletters, and news releases. Any publicity concerning FSU prepared by CKF will be subject to review by FSU.

**15. Confidentiality.** To the extent permitted by Florida law, FSU will not use, disseminate or any way disclose confidential information obtained by or provided to FSU by CKF or a "disqualified person" as that term is defined under Section 4946(a)(1) of the Code. For purposes of this Section, confidential information will include all information reasonably considered by the Parties to be confidential to one another including but not limited to research, financial strategies, correspondence, minutes, intellectual property, programs and other similar information. Notwithstanding the above, confidential information will not include such information CKF is required to make available for public inspection including a copy of its annual returns (Forms 990), its exemption application (Form 1023) and any documents issued by the IRS concerning the application.

**16. Expenditure Limitation of Funds.** FSU agrees to use the amount of funds received from CKF or Donor Partners under this Memorandum or any Donor Agreement (together with any income earned upon investment of the funds) for the purposes set forth in this Memorandum or any Donor Agreement and such funds may not be expended for any other purpose without CKF's (or the Donor Partner's) prior written approval. Any portion of funding unexpended at the completion of the Project Period shall be returned immediately to CKF or Donor Partner (as the case may be). FSU agrees not to expend any funding for any political or lobbying activity or any other purpose that would jeopardize FSU's, CKF's or a Donor Partner's tax exempt status or subject CKF to penalties under Chapter 42 of the Code. FSU and CKF accept responsibility for complying with this Memorandum's terms and conditions.

**17. FSU Supervision and Control.** Subject to the terms of this Memorandum and future Donor Agreements between the Parties, FSU will supervise and manage all Affiliated Programs and Positions and primarily control the selection process of individuals named for such Affiliated Programs and Positions. It is the Parties intention that any funds provided under

this Memorandum will not constitute grants described in IRC Section 4945(d)(3) or (d)(4) of the Code and the Parties will take all steps to ensure that such funds are administered and managed so to avoid any characterization as such.

**18. FSU Funding.** Under Florida law all funding by FSU is subject to appropriation by the Florida State legislature.

**19. Miscellaneous.** FSU may not transfer its interest in the Memorandum. Any attempt by FSU to transfer or assign the Memorandum other than pursuant to the Memorandum will cause the Memorandum to terminate immediately. No interpretation of the Memorandum will be inconsistent with the requirements of sections 501(c)(3) or 170(c) of the Code imposed on CKF.

**20. Expiration/Extension of Agreement.** This agreement shall expire ten (10) years from the date when the last of the five (5) Professorship Positions established pursuant to Section 3 of this Memorandum is first filled. The Memorandum may be extended pursuant to the written agreement of the Parties hereto.

*Signature Page Follows*

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as February 22, 2013.

**CHARLES KOCH FOUNDATION**

By: \_\_\_\_\_  
Name: Richard H. Fink  
Title: President  
Date: \_\_\_\_\_

**THE FLORIDA STATE UNIVERSITY  
BOARD OF TRUSTEES for & on behalf of  
THE FLORIDA STATE UNIVERSITY**

By: Eric J. Barron  
Name: Eric J. Barron  
Title: President  
Date: 3-16-13

**THE FLORIDA STATE UNIVERSITY  
OFFICE OF THE PROVOST AND  
EXECUTIVE VICE PRESIDENT FOR  
ACADEMIC AFFAIRS**

By: Garnett Stokes  
Name: Garnett Stokes  
Title: Provost and Executive Vice  
President for Academic Affairs  
Date: 4/15/2013

**THE FLORIDA STATE UNIVERSITY  
COLLEGE OF SOCIAL SCIENCES**

By: David W. Rasmussen  
Name: David W. Rasmussen  
Title: Dean  
Date: 3-6-13

**THE FLORIDA STATE UNIVERSITY  
FOUNDATION, INC.**

By: Thomas W. Jennings  
Name: Thomas W. Jennings  
Title: President  
Date: 3/19/13