AGREEMENT
between
WESTERN WASHINGTON UNIVERSITY
and
WESTERN WASHINGTON UNIVERSITY FOUNDATION

August 2010

THIS AGREEMENT is entered into by and between WESTERN WASHINGTON UNIVERSITY (the University), a public institution of higher education located in Bellingham, Washington, and WESTERN WASHINGTON UNIVERSITY FOUNDATION (the Foundation), a nonprofit corporation headquartered at the University in Bellingham, Washington.

WHEREAS, the University, pursuant to RCW 28B.35.120(10) may receive such gifts, grants, conveyances, devises, and bequests of real or personal property from whatsoever sources, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out University programs; and

WHEREAS, the University has, from its express power to receive such gifts, the implied power to solicit the same pursuant to an agreement such as this; and

WHEREAS, the University has authority pursuant to RCW 28B.35.120(1) to carry out such other activities consistent with Chapter 28B.35 RCW and the authority pursuant to RCW 28B.35.120(9) to enter into contracts essential to the purposes of the University; and

WHEREAS, the Foundation is a nonprofit corporation duly organized for such purposes as maintaining, developing, increasing, and extending the facilities and services of the University; and

WHEREAS, the Foundation is empowered to solicit and receive property and to make contributions, grants, gifts, and transfers of property to the University; and

WHEREAS, the University and the Foundation first entered into a similar agreement in 1995, which has been reviewed and is now amended to reflect changes in the name of the Foundation and to update other aspects of the relationship between the University and the Foundation,

NOW, THEREFORE, the parties hereby agree as follows:
I. Pledge of Mutual Support and Cooperation

The Board of Trustees of the University and the Board of Directors of the Foundation pledge their mutual support and cooperation in furtherance of the respective purposes of the University and the Foundation. The Board of Trustees of the University recognizes and respects the authority of the Board of Directors of the Foundation to govern and manage its affairs, as set forth in its Articles of Incorporation. The Board of Directors of the Foundation recognizes and respects the authority of the Board of Trustees to govern the University, to define its policies and purposes, and to determine program emphasis.

II. Obligations of the Foundation

The Foundation, its Board of Directors, officers, and agents agree to:

1. Design and implement such programs and procedures so as to persuade continuous and special philanthropic support and benefactions to further the purposes of the Foundation for the benefit of the University. This support shall include financial support for the University President and other designated University officials to engage in University development activity, including, but not limited to, expenses for travel, vehicle provision, certain memberships, and entertainment expenses, as may need to be incurred. For this purpose, the Foundation will comply with all applicable federal and state laws, and will establish rules and procedures for the management of all affairs of the Foundation in accordance with:

   a. the requirements for tax-exempt entities under the federal laws described in Section 501(c)(3) of the Internal Revenue Code of 1954 and 1986, or acts amendatory thereof or supplementary thereto; and

   b. the laws of the state of Washington applicable to the Foundation, including, but not limited to, those governing charitable solicitations (Chapter 19.09 RCW), nonprofit corporations (Chapter 24.03 RCW), trusts holding property for charitable purposes (Chapter 11.110 RCW), and the authority of state agencies (Chapter 43.09).

2. Apply for and aid in the processing of applications for patents and copyrights; receive or purchase patents and copyrights, inventions, processes, and
discoveries; hold, manage, use, and develop the same; sell, license, or otherwise dispose of the same; and collect royalties thereon.

3. Accept, hold, administer, invest, and disburse such funds and properties of any kind or character as from time to time may be given to it by persons or foundations absolutely or in trust, as the case may be; retain proper agents, experts, consultants, accountants, counselors, advisers, and investment advisers for the proper accepting, holding, administering, investing, and disbursing of such funds and properties of any kind or character; and in general do all things that may appear necessary and useful in accomplishing these purposes.

4. Acknowledge that the Foundation can provide financial support for the University to hire employees for various program or development activities.

5. Use all assets and earnings of the Foundation exclusively for University purposes, including the payment of expenses necessarily incident thereto; and no part of such assets and earnings shall benefit any officer or member of the Board of the Foundation or any other individual, except in payment of reasonable compensation for services actually rendered or expenses necessarily incurred.

6. Have the authority, and it shall be its duty, to hold and apply the corpus and income of any donation, grant, devise, or bequest, or any part thereof in such manner as may have been stipulated or provided in the instrument creating such donation, grant, devise, or bequest.

7. Have the authority to sell, mortgage, pledge, lease, or exchange all or any part of the real or personal property or funds of the Foundation, unless otherwise specifically provided in the Foundation’s creating instrument, at such prices and upon such terms and conditions as the Foundation may deem best; and the Foundation may prudently invest and reinvest Foundation funds, although such investments are not approved as investments for University trustees under the laws of the state of Washington.

8. Have full power and authority to purchase, lease, accept as a gift, devise, or bequest, or otherwise acquire such real or personal property for University purposes, contingent upon University approval by the President or his designee, and to establish title of such property in the University upon acknowledgement of receipt.
9. Have full power and authority to purchase, lease, accept as a gift, devise, or bequest, or otherwise acquire such real or personal property, to be held, administered, or used in any way whatsoever for the benefit of the University, or to assist the University in the fulfillment of its educational purposes; and to that end, the Foundation shall have full power and authority to hold, own, control, handle, administer, or operate any such real or personal property, including the operation of any business connected with or incident to the ownership or control of such property, and to sell, lease, pledge, mortgage, exchange, or otherwise dispose of any such property at such prices and upon such terms and conditions as it may deem best.

10. Borrow money and make and issue bonds, notes, contracts, and other evidence of indebtedness therefore, and by the proper resolution duly adopted by a majority vote of the members of the Foundation’s Board of Directors, to secure payment thereof by authority provided above.

11. Engage in and disburse any part or all of its funds, both income and principal, for any and all lawful activities permitted by the laws and regulations governing tax-exempt charitable corporations at that time, and which may be necessary or incidental to the furtherance of the purposes of this Foundation, including disbursements for scholarships or grants for students at the University pursuant to such terms and conditions as might be lawfully established by donors or the University.

12. Hold, invest, and manage University endowment funds established through donation, grant, devise, or bequest from any public or private source as agent of the University; and apply the corpus and income, or any part thereof in such manner as may have been stipulated or provided in the instrument creating the endowment.

13. Use reasonable portions of its funds and income thereto to pay the administrative expenses of the operation of the Foundation not provided by the University under this Agreement.

14. Not change its stated purpose for existence as set forth in Article IV of its Articles of Incorporation during the lifetime of this Agreement without first obtaining written consent from the University.

15. Agrees to be responsible and account for in its own records all donations wherein the donor names the Foundation or the University as recipient. The Foundation
agrees to accept, acknowledge, and timely tender to the University all donations it receives from donors who expressly direct that the donation be made to the University and not the Foundation. Funds will be timely tendered to the University in accordance with donor intent and University policy.

16. Agrees to transmit to the University’s Vice President for Business and Financial Affairs a copy of its annual audited financial statement and management letter, if any, prepared by an independent certified public accountant, by October 15 of each year. The Foundation agrees to makes its books and records available to audit by such individual as designated by the University’s Board of Trustees or its designee.

III. Obligations of the University

For and in consideration of the Foundation promising to operate solely for the benefit of the University and to carry out the aforementioned activities, the University agrees to:

1. Provide the Foundation with office space, utilities, office equipment, furnishings, and access to space for development activities. The fair rental market value for the use of such space and equipment shall be deemed to be a partial payment by the University for the Foundation’s services as described in Article II above.

2. Provide the Foundation with support services, such as consumable office supplies, telephone service, software and data services, postage, the use of audio-visual equipment and services, errors and omissions insurance coverage for its directors, workers’ compensation insurance coverage for its volunteers, and duplicating, printing, and publication services, all as partial payment for the Foundation’s services to the University as described in Article II above.

3. Provide for the operation of the Foundation, professional staff services in the form of a person to function as executive director of the Foundation and such other professional and classified staff as may be needed to carry out Foundation activities within the confines of support budgeted by the University. The University also agrees to provide accounting, fiscal, information, and such other services as may be necessary to carry out Foundation activities. The services provided to the Foundation by the University pursuant to this section shall be services rendered by employees of the University.
4. Provide parking passes to Foundation donors for special events and other limited uses as specified annually by the Foundation.

5. Annually determine the level of services to be provided to the Foundation, in consultation with the Foundation. The services anticipated to be provided may include the provisions of memberships, a vehicle for use by the President, reimbursement for entertainment expenses connected to development activities, and the like, to be incurred by the President and other designated University staff. The President’s expenses will be reviewed quarterly by the Chair of the Board of Trustees of the University, or his designee, including those submitted for reimbursement to the Foundation, to insure that the President’s expenses have been properly submitted, reviewed, and approved.

6. Submit an annual statement of accounting to the Foundation summarizing the value of items 1, 2, and 3 above, and referencing salary and benefits. This submission can be in the form of the portion of the annual operating budget adopted by the University which relates to University advancement and development activity. The University shall submit its annual statement of accounting to the Foundation by September 1 of each year.

IV. Services Acknowledged

The services as described in Article III above shall constitute payment in full by the University for Foundation services. The Foundation will in turn acknowledge to the University that it has fully complied with its obligation to expend its best efforts to seek to accrue gifts, grants, donations, and endowments for the benefit of the University.

V. Other Agreements

The Foundation and the University further agree as follows:

1. At all times and for all purposes of this Agreement, except for the provisions in paragraph II. 12, the Foundation shall act as an independent contractor and not as an agent of the University. The Foundation, when acting as an agent of the University, shall abide by the terms set forth in Western Washington University Board of Trustees rules of operations.

2. That Foundation books, accounts, and records are not public records as defined in Chapter 42.17 RCW and Chapter 42.56 RCW; and that the University’s public records that pertain to donations to the University are non-disclosable under RCW
42.56.320(4) or otherwise non-disclosable under RCW 42.56.230(4) or .420(4), or such other provisions as may be enacted into law.

3. Foundation accounts and records pertaining to the management of University endowments are deemed public records and the Foundation shall provide, upon request of the University, reports thereon in a timely manner.

VI. Not Assignable

This Agreement is not assignable by the Foundation either in whole or in part.

VII. Variations and Amendments in Writing

No amendment, alteration, or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreements not incorporated herein, and no amendments, alterations, or variations of the terms hereof unless made in writing between the parties, shall be binding on any of the parties hereto.

VIII. Parties Responsible for Own Acts

The Foundation and the University shall each be responsible for their own acts and responsible to each other for any negligent acts which cause damage to the other.

IX. Termination of Agreement

This Agreement may be terminated by either party effective at the end of any State of Washington fiscal year upon written notice to the other party at least thirty (30) days in advance thereof.

X. Choice of Laws

This agreement shall be construed in accordance with the laws of the state of Washington.

XI. Effective Date

This Agreement shall be effective immediately and replaces any and all earlier agreements between the parties.
WESTERN WASHINGTON UNIVERSITY

By: 
Chair, Board of Trustees

Date: 10-8-2010

Attest: 
Secretary, Board of Trustees

Date: 10-18-10

Approved as to legal form:

By: WENDY K. BOHLKE, Senior Counsel
Office of Attorney General

Date: 10-8-2010

WESTERN WASHINGTON UNIVERSITY FOUNDATION

By: 
Chair, Board of Directors

Date: Oct. 27, 2010

Attest: 
Secretary, Board of Directors

Date: 10-29-2012