CONTRACT BETWEEN
OREGON STATE UNIVERSITY
AND
RECOGNIZED FOUNDATION

AGREEMENT TO PROVIDE SERVICES AND FACILITIES
IN EXCHANGE FOR FINANCIAL SUPPORT

THIS AGREEMENT is made and entered into between Oregon State University and Oregon State University Foundation. This agreement supercedes all previous contracts between the parties.

RECITALS:

1. Oregon State University, hereinafter referred to as UNIVERSITY, is an institution of higher education and a member of the Oregon University System existing under and by virtue of ORS Chapters 351 and 352, including ORS 352.002.

2. Oregon State University Foundation, hereinafter referred to as FOUNDATION, is a private non-profit public benefit corporation existing under and by virtue of Oregon Laws 1989 Chapter 1010 for the purpose of assisting UNIVERSITY, which has obtained and continues to maintain tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986. FOUNDATION's purpose is to aid and promote educational and charitable purposes and lawful activities of UNIVERSITY.

3. FOUNDATION has been recognized pursuant to Division 46 of the Administrative Rules of the Oregon State Board of Higher Education. FOUNDATION fully satisfies the eligibility requirements set forth in OAR 580-046-0005(3). (Hereinafter, specific citation to the appropriate sections of Division 46 are referred to as "Rule.")

4. The President of UNIVERSITY has recognized FOUNDATION as provided by Rule 580-046-0005(1).

5. FOUNDATION has accepted recognition as provided by Rule 580-046-0010(3).

6. It is the purpose of this contract and the representations made by each party pursuant thereto to comply with the requirements of Rule 580-046-0035(7) and to set forth the manner in which UNIVERSITY is to provide support to FOUNDATION and in which FOUNDATION is to provide support for UNIVERSITY.

AGREEMENT:

It is therefore agreed by and between the parties as follows:

1.00 FOUNDATION USE OF UNIVERSITY NAME, ETC.
1.01 FOUNDATION may, in connection with its lawful business and activities, use the name of UNIVERSITY as well as UNIVERSITY's logo, informal seal, and other symbols and marks of UNIVERSITY.

1.02 FOUNDATION shall not delegate the authority for the use permitted by 1.01 to any person or entity without the express written approval of the President of UNIVERSITY.

1.03 FOUNDATION agrees to cease the uses permitted by 1.01 above

1.03(1) Upon FOUNDATION's dissolution or upon withdrawal of recognition pursuant to Rule 580-046-0045.

1.03(2) When FOUNDATION ceases to be a private non-profit corporation or otherwise fails to comply with Rule 580-046-0020(1), (2), and (3).

2.00 FOUNDATION AFFILIATES (NOT SEPARATELY INCORPORATED)

2.01 FOUNDATION agrees to comply with the provisions of Rule 580-046-0020(4) regarding affiliates which are part of the FOUNDATION organization and which support a particular unit or activity of UNIVERSITY and which are not separately incorporated.

2.02 To permit compliance with Rule 580-046-0020(4)(d) FOUNDATION advises that the following named groups are the affiliates subject to Rule 580-046-0020(4):
   - OSU Beaver Athletic Student Fund
   - Construction Education Foundation (CEF)
   - E. R. Jackman Board

2.03 UNIVERSITY may recommend to FOUNDATION that FOUNDATION include a previously unrecognized affiliate, and FOUNDATION agrees to give reasonable consideration to such request, provided that the proposed affiliate meets the requirements of Rule 580-046-0020(4).

3.00 ENTITIES ESTABLISHED BY OR ASSOCIATED WITH FOUNDATION

3.01 FOUNDATION agrees to comply with the provisions of Rule 580-046-0020(5) regarding associates which are part of the FOUNDATION organization and which are separately incorporated.

3.02 To permit compliance with Rule 580-046-0020(5), FOUNDATION advises that the Oregon 4-H Foundation is a separately incorporated non-profit corporation associated with FOUNDATION.

3.03 To permit compliance with Rule 580-046-0020(5), FOUNDATION advises that the Cascades Campus Foundation is a separately incorporated non-profit corporation associated with FOUNDATION.
3.04 To permit compliance with Rule 580-046-0050(5)(c), FOUNDATION advises that the Trysting Tree Golf Club, Inc. and the Harvey Ranch, Inc. are for-profit activities wholly owned by FOUNDATION.

3.05 The President approves the associations of Trysting Tree Golf Club, Inc. and Harvey Ranch, Inc. described in 3.04 above and has reported them to the Chancellor of the Oregon University System as required by 580-046-0020(5)(c).

3.06 UNIVERSITY may recommend to FOUNDATION that FOUNDATION associate a previously unrecognized entity, and FOUNDATION agrees to give reasonable consideration to such request, provided that the proposed associate meets the requirements of Rule 580-046-0020(5).

4.00 FOUNDATION INDEPENDENCE FROM UNIVERSITY

4.01 UNIVERSITY and FOUNDATION agree to encourage and maintain the independence of FOUNDATION, to act at all times so as not to jeopardize that independence, while at the same time encouraging the cooperative relationship between UNIVERSITY and FOUNDATION.

5.00 UNIVERSITY OFFICERS AND EMPLOYEES AS NON-VOTING MEMBERS OF FOUNDATION’S GOVERNING BODIES

5.01 The President of the UNIVERSITY shall be an ex officio non-voting member of the FOUNDATION Board of Trustees.

5.02 FOUNDATION agrees to cooperate with the President and/or the President’s designee to permit compliance with Rule 580-046-0030(2).

6.00 COOPERATION BETWEEN FOUNDATION AND UNIVERSITY

6.01 FOUNDATION agrees, in accepting gifts of all kinds, to obtain prior approval of any restrictive terms and conditions from UNIVERSITY Vice President for Advancement and the Provost. Institution approval may be in the form of UNIVERSITY guidelines granting approval for categories of restrictive terms and conditions. Before FOUNDATION transfers a gift of real property to UNIVERSITY, it shall obtain the written approval of UNIVERSITY Vice President for Finance and Administration. UNIVERSITY and FOUNDATION shall advise donors that a restricted gift for the benefit of the UNIVERSITY may not be accepted without UNIVERSITY and FOUNDATION approval.

6.02 The President of UNIVERSITY shall assume a prominent role in the fundraising activities of FOUNDATION on behalf of UNIVERSITY.

6.03 FOUNDATION shall annually provide to the President a summary of gifts received. The President shall provide such reports to the Chancellor.

6.04 FOUNDATION agrees that revenue received from a UNIVERSITY activity, other than development, shall not be deposited in a FOUNDATION account.
6.05 UNIVERSITY and FOUNDATION agree to periodically review existing guidelines regarding the identification of funds so that the intended donee, whether UNIVERSITY or FOUNDATION, actually receives the funds, subject to the following:

6.05(1) If FOUNDATION is the intended recipient of funds made payable to UNIVERSITY, the funds shall first be deposited in a state account and then transferred to FOUNDATION.

6.05(2) Funds payable or gifts made to UNIVERSITY shall not be transferred to FOUNDATION unless supporting documents demonstrate that FOUNDATION is the intended recipient.

6.05(3) If FOUNDATION deposits funds in its accounts or receives other gifts intended for UNIVERSITY, FOUNDATION shall transfer those funds or gifts to UNIVERSITY.

7.00 LIMITATIONS ON PAYMENTS BY FOUNDATIONS

7.01 FOUNDATION agrees not to make any payments to a UNIVERSITY employee except as permitted by Rule 580-046-0035(6).

7.02 UNIVERSITY agrees to promptly consider and address requests for approval required by Rule 580-046-0035(6)(b).

7.03 UNIVERSITY agrees to use its best efforts to obtain approvals required by Rule 580-046-0035(6)(a).

7.04 UNIVERSITY agrees to pay out all moneys received by it under Rule 580-046-0035(6) in the manner provided by Rule 580-046-0035(6)(c).

8.00 UNIVERSITY SUPPORT OF FOUNDATION

8.01 UNIVERSITY shall provide student employees to perform miscellaneous service to FOUNDATION, including but not limited to tele-funds, data entry and gift receipting. UNIVERSITY will provide FOUNDATION access to its Human Resources Information System and its Financial Information System for the purpose of preparing payroll information for student employees. FOUNDATION agrees not to use any HRIS or FIS data for any purpose other than meeting its payroll obligations set out in this section. FOUNDATION agrees not to disclose any student employment records to any other party.

8.02 UNIVERSITY shall provide FOUNDATION access to UNIVERSITY'S Student Information System for the purpose of verifying eligibility for scholarships administered by FOUNDATION. FOUNDATION agrees not to use SIS information for any purpose other than that set out in this section or section 9.01(8). FOUNDATION agrees not to disclose any student records to any other party.
8.03 UNIVERSITY shall provide FOUNDATION with office space at the location and under the terms and conditions set out in the Lease between the parties dated June 2, 2004.

8.04 UNIVERSITY shall provide FOUNDATION access to and use of the support services listed in 8.04(1) to 8.04(4). FOUNDATION shall provide reimbursement for such services in accordance with normally established rates charged to UNIVERSITY departments.

8.04(1) University Telecommunications Office services, including all telephone related services, data and/or network services, and computer systems services, including Internet access and central web services. FOUNDATION agrees it will comply with all State of Oregon, Oregon University System and UNIVERSITY policies and procedures on use and security;

8.04(2) Printing Department services, including printing, duplicating, mailing services, campus mail and campus freight;

8.04(3) Surplus Property sales and recycling services; Memorial Union catering; Peavy Lodge rental, Communications Media Center facilities and equipment rental;

8.04(4) Use of materials developed by University Marketing, with prior approval of Marketing;

8.05 The OSU Beaver Athletic Student Fund (BASF) is a named affiliate of FOUNDATION and is the fundraising unit in support of the UNIVERSITY Athletic Department. It is a department within FOUNDATION. The staff of BASF are employees of FOUNDATION and shall comply with FOUNDATION policies and reporting relationships. UNIVERSITY agrees to provide office space within Gill Coliseum for the BASF staff. Notwithstanding Article 8.04, UNIVERSITY will provide at its cost all utilities, office furniture, and telecommunication, including all telephone related services, data and/or network services, and computer systems services, including internet access and central web services for BASF staff with offices at Gill Coliseum.

8.06 So long as UNIVERSITY has an agreement with the Oregon State Police for law enforcement services, it shall include the leased premises referred to in 8.03 within the patrol areas covered by that agreement.

8.07 UNIVERSITY shall make available for use of FOUNDATION the UNIVERSITY equipment listed on inventory with a location at FOUNDATION. During the period of use, FOUNDATION will maintain, make reasonable repairs, and insure such property against property loss and liability. FOUNDATION may discontinue use and return such property at any time with normal wear and tear at no cost or penalty assessed.

8.08 UNIVERSITY shall provide FOUNDATION employees with UNIVERSITY identification cards. FOUNDATION employees shall be entitled to parking, admittance to athletic events, access to Valley Library, and participation in staff recreation and
fitness programs at the same rates that such benefits and facilities are made available to UNIVERSITY employees.

8.09 UNIVERSITY agrees that its executive officer in the position named in 5.01 may serve as an ex officio non-voting member of the Board of Trustees of FOUNDATION.

8.10 UNIVERSITY shall pay FOUNDATION $2,523,854 to support the operating costs for the services described in 9.00 during the term of this agreement as defined in 14.01. Payment shall be made on a monthly basis to FOUNDATION commencing July 31, 2010, with payment due on the last day of each month.

8.11 UNIVERSITY shall provide to FOUNDATION on a biennial basis, its priorities for FOUNDATION fundraising efforts.

9.00 FOUNDATION SUPPORT OF UNIVERSITY

9.01 FOUNDATION support of UNIVERSITY may include, but is not limited to:

9.01(1) Fundraising and gift solicitation with individuals, corporations, foundations, and other private organizations, which shall be consistent with the UNIVERSITY priorities referred to in 8.11, and including a capital campaign.

9.01(2) Supporting the OSU Venture Development Fund and the OSU Venture Grant Program (Fund and Program) through specific fundraising from individuals and corporations, fund investment and management, issuance of tax credit certificates, record keeping, and report preparation, as more specifically described in the Fund and Program, adopted by UNIVERSITY.

9.01(3) Participating in the development of strategic goals, priorities and plans for fundraising for UNIVERSITY.

9.01(4) Receiving, investing, and administering funds for charitable, scientific, and educational activities of UNIVERSITY.

9.01(5) Supporting UNIVERSITY by means of funds donated to FOUNDATION and consistent with such restrictions as meet UNIVERSITY guidelines or have been approved by UNIVERSITY. Funding is normally provided for purchase of UNIVERSITY equipment and supplies; faculty travel; support of research by selected faculty, staff, and students; funding faculty chairs; providing scholarships to students, donor and employee recognition, carrying out other activities of UNIVERSITY involving educational, research, cultural, scientific, public service, outreach and other charitable activities and lawful purposes of UNIVERSITY. All such support shall be in accordance with FOUNDATION's purposes as stated in its current Articles of Incorporation and Bylaws and FOUNDATION's classification by the Internal Revenue Service as a tax exempt organization under Sections 501(c)(3); 509(a)(1) and 170(b)(1)(A)(iv) of the Internal Revenue Code of 1986.

9.01(6) Serving as an instrument for entrepreneurial activities for UNIVERSITY, including engaging in such activities as purchasing, developing, or managing real
estate for UNIVERSITY expansion, student housing or other purposes; holding equity shares which UNIVERSITY has received in connection with the license of UNIVERSITY technology; and advancing and guaranteeing funds based on fundraising pledges in order to further the interests of UNIVERSITY.

9.01(7) Performing other acts as may be deemed appropriate for carrying out the purposes of FOUNDATION.

9.01(8) Operation and maintenance of FOUNDATION data processing equipment, peripheral hardware and software; development and maintenance of hardware and software systems programs to provide accounting, development, and alumni record keeping. FOUNDATION agrees not to use any non directory student records, as defined in the Family Educational and Privacy Rights Act, 20 USCA 1232g et seq., and Oregon Administrative Rule 576-020-0010 which UNIVERSITY makes available to it pursuant to this section, for any purpose other than fulfillment of these data processing responsibilities and carrying out the purposes in 9.01(1). FOUNDATION further agrees not to disclose any non directory student records to any other party except the University Alumni Office.

9.02 In directing and managing those UNIVERSITY employees referred to in 8.01, FOUNDATION agrees to comply with UNIVERSITY policies with regard to personnel matters involving UNIVERSITY student workers.

9.03 FOUNDATION shall use its best efforts to protect the confidentiality of donor information and shall not, without the prior consent of the donor or potential donor, disclose the names, addresses, telephone numbers, or other identifiable information of donors or potential donors to anyone other than UNIVERSITY and FOUNDATION personnel and the lawyers, accountants and other professional advisors of UNIVERSITY and FOUNDATION who need to know such information, except pursuant to court order or an opinion of counsel to the effect that such disclosure is required by applicable law.

10.00 AUDITS, LEGAL, AND REPORTING

10.01 FOUNDATION will engage a certified public accounting firm, to serve as the FOUNDATION’s independent auditor and to conduct a full and complete annual audit of its finances and operations and to examine compliance of UNIVERSITY and FOUNDATION with the provisions of Division 46 in connection with that annual audit. FOUNDATION agrees to notify UNIVERSITY within 30 days of its engagement of said certified public accounting firm and any change in selection.

10.02 [Intentionally deleted]

10.03 FOUNDATION agrees to provide the following material and information to the President of UNIVERSITY annually on or before September 24:

10.03(1) Audit report

10.03(2) A list of FOUNDATION officers, directors, and trustees
10.03(3) A list of FOUNDATION managers

10.03(4) The names of the officers, directors, and trustees of all entities to which Rule 580-046-020(4) and (5) are applicable.

10.03(5) A resolution of the Board of Directors affirming acceptance of the conditions of recognition by UNIVERSITY in accordance with Rule 580-046-0005(4)(b) and 580-046-0010(3).

10.04 FOUNDATION agrees to comply with Rule 580-046-0040(2)(b) by permitting the President, or, after consultation with both the UNIVERSITY and FOUNDATION President, the Chancellor using UNIVERSITY or OUS internal auditors, to inspect and audit all FOUNDATION books and records at reasonable times. The FOUNDATION shall provide such reports of and information on its financial status and operations as required by the President or the Chancellor in order to assure conformance by UNIVERSITY and FOUNDATION with these rules.

11.00 COMPLIANCE WITH THE BOARD OF HIGHER EDUCATION RULES

11.01 Both the UNIVERSITY and FOUNDATION agree to comply with the rules and directives of the Oregon State Board of Higher Education pertaining to the relationship between institutions and affiliated organizations, including amendments thereto adopted by the Board of Higher Education. UNIVERSITY shall provide FOUNDATION with proposed amendments as soon as possible but in no event less than 5 days prior to the meeting of the State Board of Higher Education at which they are considered for adoption.

12.00 TAX COMPLIANCE

12.01 FOUNDATION hereby affirms, under penalty of perjury, as provided in ORS 305.385(6), that to the best of FOUNDATION's knowledge, FOUNDATION is not in violation of any tax laws described in ORS 305.380(4).

13.00 AMENDMENTS

13.01 This contract may be amended by mutual written consent of the parties at any time.

14.00 TERM

14.01 The term of this agreement shall be twelve months, from July 1, 2010, to June 30, 2011.

15.00 TERMINATION DUE TO NONAPPROPRIATION OF FUNDS

15.01 If sufficient funds are not provided in future legislatively approved budgets to permit UNIVERSITY in the exercise of its reasonable administrative discretion to
continue this contract, UNIVERSITY may terminate this contract without further liability by giving FOUNDATION not less than 30 days prior notice.

16.00 RECIPROCAL INDEMNIFICATION

16.01 Except as otherwise limited by Oregon Law, ORS 30.260 through 30.300, and the Oregon Constitution, Article XI, Section 7, each party shall be responsible for its tortious acts and those of its officers, employees, or agents arising out of, or in any way connected with, the acts of each party under this contract.

17.00 MERGER

17.01 This contract constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this contract. No amendment, consent, or waiver of terms of this contract shall bind either party unless in writing and signed by all parties. Any such amendment, consent, or waiver shall be effective only in the specific instance and for the specific purpose given. The parties, by the signature below of their authorized representatives, acknowledge having read and understood this contract and agree to be bound by its terms and conditions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

OREGON STATE UNIVERSITY FOUNDATION

By ____________________________

J. Michael Goodwin, President and CEO

Dated:

OREGON STATE UNIVERSITY

By ____________________________

Mark McCambridge, Vice President, Finance and Administration

Dated: 7/2/2010

OREGON UNIVERSITY SYSTEM

By ____________________________

George Pernsteiner, Chancellor

Dated: 8-12-2010

APPROVED AS TO LEGAL SUFFICIENCY

By ____________________________

Special Assistant Attorney General

Dated: 7/28/10

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