Western Foundation Agreement

AGREEMENT
between
WESTERN WASHINGTON UNIVERSITY
and
THE WESTERN FOUNDATION

This Agreement is entered into by and between WESTERN WASHINGTON UNIVERSITY, hereinafter referred to as the "University," and THE WESTERN FOUNDATION, a nonprofit corporation, hereinafter referred to as the "Foundation."

WITNESSETH:

WHEREAS, the University, pursuant to RCW 28B.35.120(10) may receive such gifts, grants, conveyances, devises and bequests of real and 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 the University programs; and

WHEREAS, the University has from its express power to receive such gifts, grants, conveyances, devises and bequests of real or personal property from whatsoever source the implied power to solicit the same pursuant to an agreement such as this; and

WHEREAS, pursuant to RCW 28B.35.120(10), the University has the authority to carry out such other activities consistent with Chapter 28B.35 RCW and not in conflict with the directives of the University's Board of Trustees which would be additional authority for this agreement; and

WHEREAS, the Articles of Incorporation of the Foundation set forth in Article IV declare the purpose of the Foundation to be as follows:

> 1. Purposes. The corporation is organized exclusively for educational, charitable, scientific and literary purposes, within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or any successor provision or code (the "Code"). The primary purposes of the corporation shall be to solicit private contributions to, or for the benefit of, Western Washington University; to receive, hold, invest and

administer contributions and other property; to make expenditures to, or for the benefit of, Western Washington University; and to otherwise promote and support, directly or indirectly, the purposes of Western Washington University.

2. Limitations.

A. The corporation shall have no capital stock, and no part of its net earnings shall insure to the benefit of any director or officer of the corporation, or of any private individual.

B. No director, officer, or any private individual shall be entitled to share in the distribution of any of the corporate assets upon dissolution of the corporation, or upon the winding up of its affairs. Upon such dissolution or winding up, all the remaining assets of the corporation shall be distributed by the board of directors to Western Washington University for the purposes designated by the donors.

C. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting, to influence legislation except as may be permitted to Section 501(c)(3) organizations by the Internal Revenue Code, and the corporation shall not participate in, or intervene in (including the publication or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

D. Notwithstanding any other provisions of these Articles, the corporation shall not conduct or carry on activities not permitted to be conducted or carried on by an organization exempt form federal income tax under Section 501(c)(3) of the Internal Revenue Code (as now stated or as hereafter amended, or any successor code), or by an organization contributions to which are deductible under Section 170(c)(2) of such Code.

3. Powers. In general, and subject to such limitations and conditions as are or may be prescribed by law, or in the corporation's Articles of Incorporation or Bylaws, the corporation shall have all powers which now or hereafter are conferred by law upon a corporation organized for the purpose set forth above, or are necessary or incidental to the powers so conferred, or are conducive to the attainment of the corporation's purpose.

NOW THEREFORE, the parties mutually agree as follows:

I

The Board of Trustees of Western Washington University and the Board of Directors of The Western Foundation pledge their mutual support and cooperation in furtherance of the respective purposes of the University and the Foundation. The Board of Trustees recognizes and respects the authority of the Board of Directors of the Foundation to govern and manage its affairs, as set forth in the Articles of Incorporation of The Western Foundation. The Board of Directors of The Western 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 through strategic planning objectives.

II

The Foundation, its Board of Directors, officers and members 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.

(2) Establish rules, regulations and procedures for the necessary management of all affairs of the Foundation in consonance with the laws and regulations described in Section 501 (c) (3) of the Internal Revenue Code of 1954, or acts amendatory thereof or supplementary thereto.

(3) 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.

(4) 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; employ and retain proper employees, 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.

(5) Acknowledge the Foundation has no authority to hire employees to work on campus, but can provide financial support for the University to hire employees for various program or development activities.

(6) 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 employee, officer or member of the Foundation or of any other individual, except in payment of reasonable compensation for services actually rendered or expenses necessarily incurred.

(7) 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.

(8) Have the authority to sell, mortgage, pledge, lease, hypothecate 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 trustees under the laws of the State of Washington.

(9) Have full power and authority to purchase, lease, accept as a gift, bequest or devise, or otherwise acquire such personal and real property for University purposes, contingent upon University approval, and to establish title of such property in the University upon acknowledgement of receipt.

(10) Have full power and authority to purchase, lease, accept as a gift, bequest or devise, 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.

(11) 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 board of directors, to secure payment thereof by authority provided above.

(12) Engage in and disburse any part of 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.

(13) Use reasonable portions of its funds and income thereto to pay the administrative expenses of the operation of the Foundation.

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

(15) Tender to the University immediately all donations it receives from donors who expressly direct that the donation be made to Western Washington University and not The Western Foundation. The Foundation agrees to be responsible for and account for in its own records all donations wherein the donor names the Foundation as recipient.

(16) Agrees to transmit to the University's Vice President for Business and Financial Affairs a copy of its annual audited financial statements and management letter, if any, prepared by an independent certified public accountant, by October 15 of each

year. The Foundation agrees to make its books and records available to audit by such individual as designated by the University's Board of Trustees or its designee.

III

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 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.

(2) Provide the Foundation with support services, such as consumable office supplies, telephone service, postage, the use of audio-visual equipment and services, errors and omissions insurance coverage, and duplicating, printing, and publication services, all as partial payment for the Foundation's services to the University as described in Article II.

(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 exempt 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 services 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) Annually determine the level of services to be provided to The Foundation. This will be done in consultation with The Western Foundation.

(5) Submit an annual statement of accounting to the Foundation summarizing the value of items (1), (2), and (3) above, and referencing salary and benefits.

IV

The services as described in Article III 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

The Foundation and the University mutually agree that at all times and for all purposes of this Agreement the Foundation, in the performance of this Agreement, shall act as an independent contractor and not as an agent of the University. The parties agree and acknowledge that Foundation books, accounts, and records are not public records as defined in Chapter 42.17 RCW.

VI

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

VII

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and that no oral understandings or agreements not incorporated herein, and no alterations or variations of the terms hereof unless made in writing between the parties hereto, shall be binding on any of the parties hereto.

VIII

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

IX

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

This Agreement shall be construed in accordance with the laws of the State of Washington.

THIS AGREEMENT shall be effective immediately. The Foundation's obligation to submit its annual audited financial statement shall be effective October 15, 1995, and thereafter October 15 of each year. The University shall submit its annual statement of accounting as defined in Article III by September 1 each year.

WESTERN WASHINGTON UNIVERSITY

By: _____
Chair of the Board of Trustees
Date 7/10/95

Attest: _____
Secretary, Board of Trustees
Date 7/10/95

Approved for Execution

By: _____
WENDY K. BOHLKE
Assistant Attorney General

THE WESTERN FOUNDATION

By: _____
Foundation President
Date 4/26/95

Attest: _____
Foundation Secretary
Date 6/8/95

WWU\FOUNDAGR.WWU

File
Western Foundation

RECEIVED
JUN 20 1997
ACCOUNTING SERVICES

AMENDMENT TO AGREEMENT BETWEEN WESTERN WASHINGTON UNIVERSITY AND THE WESTERN FOUNDATION

The agreement between Western Washington University and The Western Foundation is hereby amended as follows:

Section III. (6) Provide parking at special events to Foundation donors who are members of the President's Club."

All other provisions of the 1995 Agreement remain in full force and effect.

Charlotte Chalker, Chair
Board of Trustees
Western Washington University

June 11, 1997
Date

F. Murray Haskell, President
The Western Foundation Board of Directors

May 15 1997
Date

Approved as to legal form:

Wendy Bohlke, Senior Counsel
for Western Washington University

wwu\foundag.amd