

Standards for Foundations and Agreement with OSU Foundation

BACKGROUND

The State Board of Higher Education (SBHE) promulgated Oregon Administrative Rules (OARs) to guide each university in its relationship with foundations that solicit financial contributions for the university. See former OAR 580-046-0005 through -0045. These OARs provided for an institution president to award recognition to a 501(c)(3) non-profit entity that met and maintained the OAR requirements. The OARs required each institution to enter into a contract with each foundation and permitted that contract to provide for the university's limited and reasonable financial support of its foundations. The goal of these OARs was to ensure independence between the non-profit foundation entities and the universities, while being clear that the foundations exist to support the missions of the universities.

Pursuant to SB 270, effective July 1, 2014, Oregon State University (OSU or the University) became its own legal entity, governed by the OSU Board of Trustees rather than the SBHE. Although SB 270 provided that the SBHE OARs remained in effect after July 1, 2014 until changed by the institution, OSU no longer had state agency rulemaking authority. Accordingly, OSU re-adopted its previous foundation OARs into OSU Standards (carrying over the same numbering), effective July 1, 2014. Former SBHE OAR 580-046-0005 through -0045 thus became "OSU Standards 580-046-0005 through -0045."

The University has recognized the Oregon State University Foundation (OSU Foundation) since the 1940s and the Agricultural Research Foundation (ARF) since the 1930s as the foundations to solicit contributions for its support. The University enters into an agreement with each foundation, generally on an annual basis, to implement the OARs, clarify the roles, benefits and responsibilities of each party and provide for the limited financial support provided to the foundations by the University.

In its October 17, 2014 Resolution Delegating Authority to the University, the OSU Board of Trustees reserved to itself the power to recognize foundations. Accordingly, the OSU Board must approve any changes to the foundation Standards or the recognition/revocation of recognition of a foundation.

Once a foundation is recognized, that recognition continues until revised or revoked. The OSU Standards also continue until revised or repealed by the OSU Board. The President or his/her designee has been delegated the authority to enter into agreements with the recognized foundations, so long as the agreements conform to and implement the OSU Standards.

The OSU Foundation has approached the University with requested revisions to the OSU Standards and Agreement to update them after SB 270, conform them to modern practices and clarify the collaborative relationship between the OSU Foundation and the University. The University also desires to update and clarify the Standards and Agreement.

FOUNDATION AGREEMENTS AND STANDARDS

Attachment 1a contains **OSU Standards 580-046-0005 through -0045**, with proposed changes highlighted in redline and additional changes in the revised docket shown in blue. These changes have been approved by University and OSU Foundation leadership, but they cannot be enacted without Board approval. (Attachment 1b contains a draft resolution and clean copy of

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these revised Standards.) Following is a summary of the key proposed changes in the Standards:

- *Updating* - The revisions update the Standards to remove references to the SBHE and Chancellor, and to vest recognition/revocation of recognition with the OSU Board.
- *Sole foundation restriction* - The revisions remove the requirement of only one entity being permitted to have recognition, given OSU's long history of recognizing the ARF.
- *Foundation affiliates* - The revisions streamline the requirements and language around foundation affiliates and associates. The Standards now more accurately reflect current practice in this regard. They also provide foundations the ability to control their other entities, provided that the University President approves of the creation of the entity and the Foundation controls the entity consistent with the Standards and Agreement.
- *Foundation employees subject to University control* - While the Standards continue to provide a general rule against foundation employees being subject to control by the University, there is now a limited exception for case-by-case situations as desired by the University President and the foundation's Chief Executive Officer (CEO). The blanket prohibition remains against any University employee being an officer of a foundation and against any foundation employee being an officer of the University. This serves the key purpose of ensuring independence between the two entities.
- *University role in fundraising* - The new Standards require the President, Provost, Vice Presidents, Deans and Athletic Director to work closely with foundation leadership in building private support for the University.
- *Processing of gifts* - The revisions streamline the processing of private gifts, and require all private gifts be paid to and managed by the foundation.
- *Appeal; Notice of termination* - The new Standards no longer contain an appeal route for the OSU Board's revocation of recognition, but the termination notice period given to the foundation for opportunity to remedy Board-identified deficiencies has been extended from 30 to 90 days.

Attachment 2 contains, as an informational item, the proposed **2015-16 Agreement between the OSU Foundation and the University**. The Agreement from 2014-15 was reorganized such that a redline copy was not legible, so only a clean copy of the proposed agreement is attached. The University and OSU Foundation leadership have approved this proposed version. Although Board approval is not required so long as the Agreement conforms to Board-approved Standards, staff welcomes the Board's input and discussion regarding this revision. In addition to implementing the changes described above in the Standards, following is a summary of the other key changes:

- *Collaborative relationship and roles* - In general, the new Agreement better memorializes the collaborative relationship between the OSU Foundation and the University, and it clarifies the parties' relative roles. It recognizes that fundraising is a shared responsibility between the parties and that the parties must coordinate the stewardship of donors. It provides that, on an annual basis, the University President will give the Foundation the University's priorities for Foundation fundraising efforts, after consultation with the Foundation on the feasibility of fundraising priorities, goals and strategies. It requires the Foundation to require its senior employees to have significant and effective collaboration and communication with University leadership. The Foundation is also required to solicit feedback from University leadership in making hiring decisions and evaluating senior Foundation employees.

- *University provision of space/equipment for certain Foundation employees* – The previous Agreement called for the University to provide office space, utilities, computers, phone/network and furniture for Foundation employees working on the Our Beaver Nation Fund in Athletics space. The new Agreement broadens this provision to Foundation employees assigned to other University units, provided that the University President has approved this in advance.
- *University control over designated Foundation accounts* – The new Agreement clarifies that the University maintains control and discretion over the expenditure of funds transferred from restricted Foundation accounts that are designated for the use of specific University units. The Foundation also agrees to use revenue from annual giving or otherwise unrestricted gifts to support its operations and to support the University as agreed by the University President and Foundation CEO each year.
- *Use of University name/logo* – The Agreement now clarifies that the Foundation is licensed to use the University's name, logo and other marks only in connection with its lawful fundraising activities. Any other Foundation uses of the University name/logo must be approved by the University President and Foundation CEO in specific instances.
- *Advocacy* – The Agreement permits the Foundation to engage in advocacy in support of the University's mission and strategic priorities, so long as the University President has given prior approval.
- *Entrepreneurial activities* – The Agreement permits the Foundation to engage in entrepreneurial activities that are in addition to its ordinary asset management activities. However, the Foundation may only engage in such enterprises to the extent it deems prudent within the confines of its fiduciary obligations.
- *Indemnification* – The Agreement provides for each party to indemnify the other party for any third-party claims arising out of acts/omissions of the indemnifying party.
- *Additional entities controlled by the Foundation* – The Agreement removes the reference to Harvey Ranch, which has been sold. It adds the approval of the Beaver Caucus, a new nonprofit corporation designed to engage in legislative and policy advocacy in support of the University.

Attachment 3 contains, as an informational item, the **2015-16 Agreement between ARF and the University**, which has not changed significantly from previous years and was executed by the University President on June 24, 2015.

RECOMMENDATION

Staff propose that the Executive & Audit Committee recommend to the Board for its approval the resolution provided in Attachment 1b establishing the revised OSU Standards 580-046-0005 through -0045, as well as the Board's ratification of the continued recognition of the OSU Foundation and the ARF.

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Attachment 1a

580-046-0005

Recognition of a Foundation

(1) ~~(1) An institution president~~The Oregon State University Board of Trustees may award recognition as an institution foundation to an entity that meets and maintains the requirements of these ~~rules~~Standards. Throughout division 046, ~~"president"~~"Board" refers to the Oregon State University Board of Trustees, "President" refers to the Oregon State University President, and "Foundation" refers to an institution ~~president and "foundation" refers to an institution foundation~~ recognized by the Board.

~~(2) Only one entity may have recognition as a foundation, except that the president may recognize other foundations existing at the time this rule is adopted. The president shall report all awards of recognition to the Chancellor. All private support of the institution~~University not provided directly to the ~~institution~~University shall be through ~~a recognized foundation, or affiliated or associated organizations as provided by OAR 580-046-0020(4) and (5).~~

(2) ~~(3)an institution foundation.~~ To ~~be eligible for recognition and to maintain continued recognition,~~a as an institution foundation, the Foundation must:

- (a) ~~(a) Be created and~~ operated with the primary purpose of support of the ~~institution~~University;
- (b) ~~(b) Have as its purpose the solicitation~~ and/or management and/or investment of private support for the benefit of the ~~institution~~University; and
- (c) ~~(c) Be organized and operated in a manner to permit compliance with federal tax law, state nonprofit law, and~~ these ~~rules~~Standards.

(3) ~~(4)Procedures for Recognition:~~

- (a) ~~(a) An entity seeking recognition as a foundation~~The Foundation shall submit to the ~~president for review~~President its:
 - (A) ~~(A)~~Articles of incorporation;
 - (B) ~~(B)~~Bylaws; and

~~(C) Any other of its organic or enabling documents.~~

~~(C)~~ (b) A president shall notify the governing body of documents or policies as requested by the President.

(b) The President will make a foundation in writing of recommendation to the Board as to recognition of the Foundation.

~~(b)(c)~~ The University and the Foundation shall execute a Recognition and Support Agreement that states the terms of their relationship and provides that compliance with these ~~rules~~Standards is a condition of continued recognition.

~~(e)~~ The ~~foundation~~Foundation shall submit all amendments to the documents described in subsection ~~(4)(a)~~ (3)(a) of this ~~rule~~Standard to the ~~president who shall submit them to the Chancellor.~~

~~(5) State System Foundation:~~

~~(e)(d)~~ ~~(a) The Chancellor may recognize as the State System foundation an entity created to provide support~~President for recommendation to the ~~Oregon State System of Higher Education~~Board.

~~(b) In the event of recognition, the procedure, conditions and limitations of these rules shall apply.~~

~~(c) In such instances, all references in these rules to a president shall be deemed to refer to the Chancellor and references to institution shall be deemed to refer to the State System. Where these require reports to the Chancellor, the Chancellor shall report to the President of the Board of Higher Education.~~

~~Stat. Auth.: ORS 351.070~~

~~Stats. Implemented: ORS 351.070~~

~~Hist.: HEB 7 1989, f. & cert. ef. 9-19-89; HEB 1 1993, f. & cert. ef. 2-5-93; HEB 5 1996, f. & cert. ef.~~

580-046-0010

Privileges and Responsibilities of Recognition

(1) ~~(1)~~ Privileges of recognition by ~~a president of a foundation~~the President may include:

(a) ~~(a)~~ License to use the ~~institution~~University name, logos, informal seals, symbols and marks; and

(b) ~~(b)~~ Use of ~~institution~~University resources in the manner provided by ~~OAR 580-046-0035(7)~~the Recognition and Support Agreement between the University and the Foundation.

(2) ~~(2)~~ No individual, group or entity ~~not awarded recognition under these rules~~other than the Foundation or its approved subsidiaries shall use any of the privileges described in this ~~rule~~Standard or otherwise make use of the ~~institution~~University name or logos except as expressly approved by the ~~institution~~University by license or contract.

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~~(3) A foundation's governing body promptly shall provide to the president a resolution of acceptance of the condition expressed in OAR 580-046-0005(4)(b), and such resolution of acceptance shall be reaffirmed annually.~~

~~Stat. Auth.: ORS 351~~

~~Stats. Implemented: ORS 351.070~~

~~Hist.: HEB 7-1989, f. & cert. ef. 9-19-89; HEB 5-1996, f. & cert. ef. 12-18-96~~

580-046-0020

~~Institution~~ Foundation Organization, Affiliates, Relationships

~~(1) (1) A foundation~~The Foundation shall be organized and operated in compliance with the Oregon Nonprofit Corporation Act.

The Foundation shall be organized and operated ~~pursuant to the Oregon nonprofit corporation law.~~

~~(1)(2) (2) A foundation shall obtain and maintain status as a tax-exclusively for exempt entity pursuant to purposes as provided in~~ Section ~~501(Cc)~~(3) of the ~~federal~~ Internal Revenue Code ~~and other similar Oregon statutes.~~

~~(2)(3) (3) A foundation's~~The Foundation's articles of incorporation ~~or other governing documents~~ shall require that, upon its dissolution ~~or withdrawal of recognition, the foundation's,~~ the Foundation's net assets shall, within the limitations imposed by legal and fiduciary rights and responsibilities, be distributed to the ~~institution that awarded recognition, or~~University or to another entity that has been awarded recognition by that institutionthe University pursuant to OAR OSU Standard 580-046-0005.

~~(4) A foundation may include as part of its organization one or more affiliates that support a particular unit or activity of the institution but that are not separately incorporated.~~

~~(a) An affiliate may have an advisory board that reports to and is advisory to the foundation governing body. Institution employees may serve on an affiliate's advisory board so long as they do not comprise a majority of the advisory board membership nor a majority of any quorum of such body. Institution employees may provide staff support for an advisory board, subject to OAR 580-046-0035(7).~~

~~(b) A foundation shall not delegate to an advisory board of an affiliate its authority to hire personnel or to enter into contracts.~~

~~(c) A member of each advisory board of an affiliate should serve on the foundation governing body whenever possible.~~

~~(d) No entity shall become an affiliate of a foundation until the affiliation is approved in writing by the president and reported to the Chancellor.~~

~~(5) A foundation~~ The Foundation may establish or ~~associate with control~~ another entity ~~interested in the institution~~, provided:

~~(a) The president in writing that the President~~ approves ~~of such relationship prior to any operations and the president reports approval to the Chancellor~~;

~~(3)(4) (b) Such relationship does not impair or circumvent the requirements of OAR 580-046-0025 and otherwise the creation of the entity and the Foundation controls the entity in a way that is consistent with the requirements of these rules; and Standards and the Recognition and Support Agreement between the University and the Foundation. Any such other entity shall comply with these Standards, and shall have in its governing documents a provision that requires that all assets on dissolution be distributed to the Foundation or the University.~~

~~(c) All for profit activities are approved by the president and reported to the Chancellor.~~

~~(6) Upon application of an institution, the Board of Higher Education may grant specific exemptions from the provisions of sections (4) and (5) of this rule.~~

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: ~~HEB 7 1989, f. & cert. ef. 9 19 89; HEB 1 1993, f. & cert. ef. 2 5 93; HEB 5 1996, f. & cert. ef. 12 18 96~~

580-046-0025

Foundation Independence from ~~Institution~~ University

(1) ~~(1) A foundation~~ The Foundation shall be independent of the ~~institution~~ University.

(2) ~~(2) To assure independence, a foundation's~~ Except in limited circumstances approved in advance by the President and the President/CEO of the Foundation, the Foundation's governing body, employees, and agents:

- (a) ~~(a)~~ Shall not be subject to control by the ~~institution~~ University or ~~an institution~~ a University employee;
- (b) ~~(b)~~ Shall not give the appearance that the ~~institution~~ University or any of its officers or employees control the ~~foundation~~ Foundation or its property, including investment of gifts and endowments made to the ~~foundation~~ Foundation.

(3) ~~(3) No institution~~ University employee may be a voting member of ~~a governing body of the institution recognized foundation~~ the governing body of the Foundation. ~~No University employee may be an officer of the Foundation, and no Foundation employee may be an officer of the University.~~

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~~Stat. Auth.: ORS 351.070~~

~~Stats. Implemented:~~

~~Hist.: HEB 7-1989, f. & cert. ef. 9-19-89; HEB 1-1993, f. & cert. ef. 2-5-93~~

580-046-0030

President's Responsibilities, Additional Rules Standards

~~(1) A president or designee shall be, and other institution employees may be, ex officio, nonvoting members of a foundation's governing body and of any executive or similar committee empowered to act for the governing body. Such appointments shall be described in all contracts entered into pursuant to OAR 580-046-0035(7).~~

(1) (2) The president The President shall be a non-voting member of the Foundation's governing body.

The President shall monitor ~~foundation~~ Foundation activities and ~~institution~~ Foundation relationships to ensure compliance with ~~Board of Higher Education rules~~ and ~~periodically shall report thereon to the Chancellor.~~

~~(1)(2) (3) A president~~ University Standards. The President may establish additional written policies and guidelines applicable to ~~a foundation~~ the Foundation consistent with these ~~and all Board of Higher Education rules and Internal Management Directives. Such policies and guidelines shall be reported to the Chancellor and the Board prior to their adoption~~ Standards.

~~(4) The president shall report to the Chancellor as required by OAR 580-046-0005(2) & (4)(c); 580-046-0020(4)(d), (5)(a), and (5)(c); 580-046-0030(2) & (3); 580-046-0035(3), (6)(b), (6)(c), & (7)(b); 580-046-0040(2)(a); & 580-046-0045(1).~~

~~Stat. Auth.: ORS 351~~

~~Stats. Implemented:~~

~~Hist.: HEB 7-1989, f. & cert. ef. 9-19-89~~

580-046-0035

(3) ~~oundation and Institution~~ When applicable to a Foundation, t The President shall assume a prominent role in fundraising and shall direct the Provost, Vice Presidents, Deans, and Athletic Director to work closely with Foundation leadership in building private support for the University.

580-046-0035

Foundation and University Operational Procedures, Gifts, Accounts, ~~Institution~~ University Support, Contracts

~~(1) An institution employee may, consistent with ORS 351. 130, encourage gifts to the institution directly as well as through the foundation.~~

~~(2) In The Foundation and the University shall establish a process for reviewing and accepting gifts of any kinds, a foundation shall:~~

~~(1) (a) Obtain institution approval of any restrictive terms and conditions, and advise donors that a all restricted giftgifts made to the Foundation for the benefit of the institution may not University.~~

~~All private gifts in support of the University shall be accepted without institution approval; paid to and~~

~~(b) Coordinate with the institution's development office or other appropriate institutional officer regarding funding goals, programs or campaigns proposed managed by an institution.~~

~~(3) The foundation shall report gifts to the foundation and to an institution as a result of foundation activities. Such reports shall be made annually to the president. The president shall provide such reports to the Chancellor.~~

~~(4) the Foundation. Revenue received from an institutiona University activity, other than through normal development activities, shall not be deposited in a foundation account.~~

~~(5) An institution and the institution-recognized foundation shall develop and implement guidelines regarding the identification of funds so that the intended donee, whether institution or foundation, actually receives the funds, subject to the following:~~

~~(a) If the foundation is the intended recipient of funds made payable to an institution, the funds shall first be deposited in a state account and then transferred to the foundation.~~

~~(b) Funds payable or gifts made to the institution shall not be transferred to the foundation unless accompanying documents demonstrate that the foundation is the intended recipient.~~

~~(2) (e) If the foundation deposits funds in its the Foundation's accounts or receives other gifts intended for the institution, the foundation shall transfer those funds or gifts to the institution.~~

~~(3) (6) Salaries, consulting fees, loans, perquisites or other benefits provided to or on behalf of an institutiona University employee, other than a student employee, by a foundationthe Foundation shall be:~~

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- (a) ~~(a)~~ Approved by the Board ~~of Higher Education~~ when paid to the ~~president~~President or other employee appointed directly by the Board ~~of Higher Education~~.
 - (b) ~~(b)~~ Approved by the ~~president~~President in writing, ~~and reported to the Chancellor~~ in instances where subsection ~~(a)~~(a) of this section does not apply.
 - (c) ~~(c)~~ Paid by the ~~foundation~~Foundation to the ~~institution~~University, which in turn will make payments to the employee in accordance with normal ~~institution~~University practice, ~~except where the Chancellor approves a different form of payment. All exceptions shall be reported to the Board of Higher Education annually by the Chancellor.~~
 - (d) ~~(d)~~ This subsection is not applicable to reimbursements for actual and necessary travel and other expenses incurred for authorized ~~institution or foundation purposes that are reported by the foundation to the president annually~~University or Foundation purposes.
- (4) ~~(7)~~ InstitutionUniversity Contract with Foundation:
- (a) ~~(a)~~ An ~~institution~~The University may provide pursuant to a written ~~contract~~Recognition and Support Agreement limited and reasonable support to the ~~foundation~~Foundation, including but not limited to space use, the cost of utilities and janitorial services, access to University telephone, computing, printing and mailing, motor pool and similar services, and all or part of the salary and related personnel costs of staff support, from funds otherwise available to the ~~institution~~University. As used in these ~~rules~~Standards, staff support is assistance by any personnel whose responsibilities and activities exclude policy making and other functions that would nullify the independence of the ~~foundation~~Foundation from the ~~institution~~University.
- ~~(b) An institution providing support to a foundation~~The University shall contract with the ~~foundation~~Foundation regarding the terms and conditions for implementing ~~OAR 580-046-0010(1) and subsection (7)(a) of this rule~~these Standards and may contract for other purposes consistent with these ~~rules~~Standards. Any such contract ~~and amendments thereto~~ shall:
- ~~(A) Accurately~~ accurately and fully describe the extent of such use and support, and ~~the consideration therefor;~~
 - ~~(B) Be reviewed by an Assistant Attorney General assigned to the Oregon Department of Higher Education; and~~
- (b) ~~(C)~~ ~~Beshall be~~ approved by the ~~president and by the Chancellor or their respective designees~~President.

~~(e) Funds received by an institution because of a contract with a foundation shall be placed in a current restricted account that is not a depository for donated or gift money.~~

~~Stat. Auth.: ORS 351.070~~

~~Stats. Implemented: ORS 351.070~~

~~Hist.: HEB 7 1989, f. & cert. ef. 9 19 89; HEB 1 1993, f. & cert. ef. 2 5 93; HEB 5 1996, f. & cert. ef. 12-18-96~~

580-046-0040

Foundation Activities

(1) ~~(1)~~ Financial and other activities of ~~a foundation~~the Foundation shall be administered and reported in accordance with law, prudent business practices and generally accepted accounting principles.

(2) ~~(2)~~ Audits and Financial Reports of the Foundation:

(a) ~~(a) A foundation~~The Foundation shall be audited annually by a certified public accountant. ~~The audit report shall be provided promptly to the president, who shall submit it and accompanying documents to the Chancellor.~~President. The audit report shall be accompanied by a current list of ~~foundation~~Foundation officers, ~~directors,~~ trustees, ~~managers~~senior staff and legal counsel ~~and the officers of any group or entity described in OAR 580-046-0020(4) and (5).~~

(b) ~~(b) A foundation~~The Foundation shall permit the ~~president or, after consultation with both the institution and foundation president, the Chancellor~~President, using ~~institution~~University or ~~OSSHE internal~~outside auditors, to inspect and audit all ~~foundation~~Foundation books and records at reasonable times. ~~The foundation~~Foundation shall provide such reports of and information on its financial status and operations as required by the ~~president or the Chancellor~~President in order to assure conformance by the ~~institution~~University and the ~~foundation~~Foundation with these ~~rules~~Standards.

~~Stat. Auth.: ORS 351.070~~

~~Stats. Implemented: ORS 351.070~~

~~Hist.: HEB 7 1989, f. & cert. ef. 9 19 89; HEB 1 1993, f. & cert. ef. 2 5 93; HEB 5 1996, f. & cert. ef. 12-18-96~~

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580-046-0045

Revocation of Recognition

(1) ~~(1)~~ The presidentBoard may revoke recognition ~~as provided therein, of the Foundation~~ if the presidentBoard finds that ~~a foundationthe Foundation~~ or its ~~operationoperations~~ conflict with these ~~rulesStandards~~ or the mission of the ~~institution. The president shall inform and consult with the Chancellor regarding all activities involved in revocation of recognition and shall provide to the Chancellor copies of all documents relating theretoUniversity.~~

(2) ~~(2)~~ Prior to ordering revocation of recognition, ~~a presidentthe Board~~ shall notify the ~~foundation'sFoundation's~~ governing body of the reasons that could form the bases for revocation of recognition. Within ~~3090~~ days of receipt of the ~~president'sBoard's~~ notification, the ~~foundationFoundation~~ may in writing propose actions to remedy the deficiencies described by the presidentBoard.

(3) ~~(3)~~ If the presidentBoard approves the proposed actions, the ~~foundation'sFoundation's~~ governing body shall implement the proposals within a time specified by the presidentBoard.

(4) ~~(4)~~ If the presidentBoard rejects the ~~foundation'sFoundation's~~ proposed actions or finds that they are not adequately implemented, the presidentBoard may revoke recognition by a written order to the ~~foundation'sFoundation's~~ governing body specifying the reasons for revocation.

~~(5) An order revoking recognition may be appealed to the Board of Higher Education if filed with the Secretary of the Board within 30 days of the date the president issues the order revoking recognition. The Board shall review the president's decision but shall not reverse that decision unless the Board finds the president acted arbitrarily or capriciously.~~

(5) ~~(6)~~ An order revoking recognition shall terminate ~~the contract provided by OAR 580-046-0035(7) and all agreements between the Foundation and the University and will revoke the privileges of recognition.~~

~~Stat. Auth.: ORS 351.070~~

~~Stats. Implemented:~~

~~Hist.: HEB 7 1989, f. & cert. of. 9 19 89; HEB 1 1993, f. & cert. of. 2 5 93~~

(6) Upon revocation of recognition, the Foundation's net assets shall, within the limitations imposed by legal and fiduciary rights and responsibilities, be distributed to the University or to another entity that has been awarded recognition by the University pursuant to this Standard.

Attachment 1b

RESOLUTION NO. ____



**Oregon State University Establishing
Revised Standards for Recognition of a Foundation**

BACKGROUND

The Oregon State University Board of Trustees may award recognition as an institution foundation to an entity that meets and maintains the Standards established by the Board.

RESOLUTION

Now, therefore, be it resolved by the Board of Trustees that the OSU Standards for recognition of a foundation, attached as Exhibit A, and originally promulgated by the State Board of Higher Education as Oregon Administrative Rules, are hereby revised and established by the OSU Board. The continued recognition of the OSU Foundation and the Agricultural Research Foundation is ratified under these Standards.

This Resolution is effective October 16, 2015.

APPROVED by the Board of Trustees October ____, 2015

_____/ /2015
Secretary to the Board Date

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Exhibit A

580-046-0005

Recognition of a Foundation

(1) The Oregon State University Board of Trustees may award recognition as an institution foundation to an entity that meets and maintains the requirements of these Standards. Throughout division 046, “Board” refers to the Oregon State University Board of Trustees, “President” refers to the Oregon State University President, and “Foundation” refers to an institution foundation recognized by the Board.

(2) All private support of the University not provided directly to the University shall be through an institution foundation. To maintain continued recognition as an institution foundation, the Foundation must:

- (a) Be operated with the primary purpose of support of the University;
- (b) Have as its purpose the solicitation and/or management and investment of private support for the benefit of the University; and
- (c) Be organized and operated in compliance with federal tax law, state nonprofit law, and these Standards.

(3) Procedures for Recognition:

- (a) The Foundation shall submit to the President its:
 - (A) Articles of incorporation;
 - (B) Bylaws; and
 - (C) Any other governing documents or policies as requested by the President.
- (b) The President will make a recommendation to the Board as to recognition of the Foundation.
- (c) The University and the Foundation shall execute a Recognition and Support Agreement that states the terms of their relationship and provides that compliance with these Standards is a condition of continued recognition.
- (d) The Foundation shall submit all amendments to the documents described in subsection (3)(a) of this Standard to the President for recommendation to the Board.

580-046-0010

Privileges and Responsibilities of Recognition

- (1) Privileges of recognition by the President may include:
 - (a) License to use the University name, logos, informal seals, symbols and marks; and
 - (b) Use of University resources in the manner provided by the Recognition and Support Agreement between the University and the Foundation.

(2) No individual, group or entity other than the Foundation or its approved subsidiaries shall use any of the privileges described in this Standard or otherwise make use of the University name or logos except as expressly approved by the University by license or contract.

580-046-0020

Foundation Organization, Affiliates, Relationships

(1) The Foundation shall be organized and operated in compliance with the Oregon Nonprofit Corporation Act.

(2) The Foundation shall be organized and operated exclusively for exempt purposes as provided in Section 501(c)(3) of the Internal Revenue Code.

(3) The Foundation's articles of incorporation shall require that, upon its dissolution, the Foundation's net assets shall, within the limitations imposed by legal and fiduciary rights and responsibilities, be distributed to the University or to another entity that has been awarded recognition by the University pursuant to OSU Standard 580-046-0005.

(4) The Foundation may establish or control another entity provided that the President approves the creation of the entity and the Foundation controls the entity in a way that is consistent with the requirements of these Standards and the Recognition and Support Agreement between the University and the Foundation. Any such other entity shall comply with these Standards, and shall have in its governing documents a provision that requires that all assets on dissolution be distributed to the Foundation or the University.

580-046-0025

Foundation Independence from University

- (1) The Foundation shall be independent of the University.
- (2) Except in limited circumstances approved in advance by the President and the President/CEO of the Foundation, the Foundation's governing body, employees and agents:

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- (a) Shall not be subject to control by the University or a University employee;
- (b) Shall not give the appearance that the University or any of its officers or employees control the Foundation or its property, including investment of gifts and endowments made to the Foundation.

(3) No University employee may be a voting member of the governing body of the Foundation. No University employee may be an officer of the Foundation, and no Foundation employee may be an officer of the University.

580-046-0030

President's Responsibilities, Additional Standards

- (1) The President shall be a non-voting member of the Foundation's governing body.
- (2) The President shall monitor Foundation activities and Foundation relationships to ensure compliance with University Standards. The President may establish additional written policies and guidelines applicable to the Foundation consistent with these Standards.
- (3) When applicable to a Foundation, the President shall assume a prominent role in fundraising and shall direct the Provost, Vice Presidents, Deans, and Athletic Director to work closely with Foundation leadership in building private support for the University.

580-046-0035

Foundation and University Operational Procedures, Gifts, Accounts, University Support, Contracts

- (1) The Foundation and the University shall establish a process for reviewing and accepting all restricted gifts made to the Foundation for the benefit of the University.
- (2) All private gifts in support of the University shall be paid to and managed by the Foundation. Revenue received from a University activity, other than through normal development activities, shall not be deposited in the Foundation's accounts.
- (3) Salaries, consulting fees, loans, perquisites or other benefits provided to or on behalf of a University employee, other than a student employee, by the Foundation shall be:
 - (a) Approved by the Board when paid to the President or other employee appointed directly by the Board.
 - (b) Approved by the President in writing in instances where subsection (a) of this section does not apply.
 - (c) Paid by the Foundation to the University, which in turn will make payments to the employee in accordance with normal University practice.

- (d) This subsection is not applicable to reimbursements for actual and necessary travel and other expenses incurred for authorized University or Foundation purposes.
- (4) University Contract with Foundation:
 - (a) The University may provide pursuant to a written Recognition and Support Agreement limited and reasonable support to the Foundation, including but not limited to space use, the cost of utilities and janitorial services, access to University telephone, computing, printing and mailing, motor pool and similar services, and all or part of the salary and related personnel costs of staff support, from funds otherwise available to the University. As used in these Standards, staff support is assistance by any personnel whose responsibilities and activities exclude policy making and other functions that would nullify the independence of the Foundation from the University.
 - (b) The University shall contract with the Foundation regarding the terms and conditions for implementing these Standards and may contract for other purposes consistent with these Standards. Any such contract shall accurately and fully describe the extent of such use and support, and shall be approved by the President.

580-046-0040

Foundation Activities

- (1) Financial and other activities of the Foundation shall be administered and reported in accordance with law, prudent business practices and generally accepted accounting principles.
- (2) Audits and Financial Reports of the Foundation:
 - (a) The Foundation shall be audited annually by a certified public accountant. The audit report shall be provided promptly to the President. The audit report shall be accompanied by a current list of Foundation officers, trustees, senior staff and legal counsel.
 - (b) The Foundation shall permit the President, using University or outside 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 in order to assure conformance by the University and the Foundation with these Standards.

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Revocation of Recognition

(1) The Board may revoke recognition of the Foundation if the Board finds that the Foundation or its operations conflict with these Standards or the mission of the University.

(2) Prior to ordering revocation of recognition, the Board shall notify the Foundation's governing body of the reasons that could form the bases for revocation of recognition. Within 90 days of receipt of the Board's notification, the Foundation may in writing propose actions to remedy the deficiencies described by the Board.

(3) If the Board approves the proposed actions, the Foundation's governing body shall implement the proposals within a time specified by the Board.

(4) If the Board rejects the Foundation's proposed actions or finds that they are not adequately implemented, the Board may revoke recognition by a written order to the Foundation's governing body specifying the reasons for revocation.

(5) An order revoking recognition shall terminate all agreements between the Foundation and the University and will revoke the privileges of recognition.

(6) Upon revocation of recognition, the Foundation's net assets shall, within the limitations imposed by legal and fiduciary rights and responsibilities, be distributed to the University or to another entity that has been awarded recognition by the University pursuant to this Standard.

Document History:

- Approved by the Board of Trustees, October 16, 2015

Attachment 2

**RECOGNITION AND SUPPORT AGREEMENT
BETWEEN
OREGON STATE UNIVERSITY AND
OREGON STATE UNIVERSITY FOUNDATION**

THIS AGREEMENT is between Oregon State University (the “University”) and Oregon State University Foundation, an Oregon nonprofit corporation (the “Foundation”), (collectively, the “Parties”).

BACKGROUND

The University is an institution of higher education governed by the Oregon State University Board of Trustees. The Oregon State University Board of Trustees is responsible for overseeing the mission, leadership, and operations of the University.

The Foundation is an independent, nonprofit public benefit corporation established under Oregon law. The Foundation is recognized as a tax-exempt public charity under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. The Foundation’s purpose is to raise, manage, distribute and steward private resources to support the mission and priorities of the University. The Foundation’s Board of Trustees is responsible for overseeing the mission, leadership, and operations of the Foundation.

The University Board of Trustees (“Board”) has adopted Standards (the “Standards”) governing the University’s relationship with the Foundation. The Foundation has asked to be recognized pursuant to these Standards, and satisfies the eligibility requirements set forth in those Standards. The Board has recognized the Foundation and the Foundation has accepted recognition as provided by the Standards. The Board’s recognition of the Foundation remains in effect until revoked.

University leadership sets fundraising priorities in collaboration with Foundation leadership, and fundraising is a shared responsibility of both the Foundation and the University. The purpose of this Recognition and Support Agreement is to comply with the requirements of the Standards and to set forth the manner in which the University is to provide support to the Foundation and the Foundation is to provide support for the University in furtherance of the University’s strategic plan and fundraising goals.

The Parties agree as follows:

**RELATIONSHIP BETWEEN THE FOUNDATION
AND THE UNIVERSITY**

The Foundation and the University are independent entities. The Foundation and the University agree to encourage and maintain the independence of the Foundation and to act at all

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times so as not to jeopardize that independence, while at the same time encouraging a cooperative, efficient and effective relationship between the University and the Foundation.

The President of the University (“President”) shall be an ex-officio non-voting member of the Foundation’s Board of Trustees. The President and the Provost, Vice Presidents, Deans, and Athletic Director shall assume prominent roles in the fundraising activities of the Foundation.

Unless otherwise agreed by the President and the Foundation’s Chief Executive Officer (“Foundation CEO”), all private gifts for the benefit of the University are to be paid to the Foundation and managed in accordance with donor intent for the benefit of the University. The Foundation shall coordinate the stewardship of all donors and prospective donors with assistance from the University.

The President shall collaborate with the Foundation CEO regarding the University’s fundraising priorities, which typically reflect multi-year strategies. Prior to determining priorities, the President will consult with Foundation leadership on the feasibility of fundraising priorities, goals and strategies.

The University shall maintain control and discretion over the expenditure of funds transferred from restricted Foundation accounts that are designated for the use of specific University units. The University shall spend all donor-restricted funds in accordance with donor intent. The Foundation will use revenue from annual giving (or otherwise unrestricted gifts) to support its operations and to support the University as agreed by the President and Foundation CEO each year through the budget process. The University agrees to spend all funds that are transferred from unrestricted Foundation accounts in accordance with University standards and policies.

The Foundation and the University shall establish a process for reviewing and accepting restrictive terms and conditions on a gift before accepting a restricted gift. The Foundation shall advise donors that a restricted gift for the benefit of the University may not be accepted without University approval.

All state or federal grants for the benefit of the University shall be paid to the University and not the Foundation.

The Foundation agrees not to make any payments to a University employee except as permitted by the Standards.

The Foundation and the controlled entities named in Section 0 may, in connection with its lawful asset management, advocacy and fundraising activities on the University’s behalf, use the name of the University as well as the logo and other symbols and marks of the University. The Foundation shall not delegate or assign this right to any person or entity without the express written approval of the President or his or her designee. The Foundation shall cease the uses permitted in this Section 0 upon the withdrawal of recognition pursuant to the Standards. The President and Foundation CEO may agree in writing to other Foundation uses of the University’s name, logo, symbols or marks in particular circumstances.

The Foundation and the University shall use their best efforts to protect the confidentiality of donor or potential donor information. Except in cases where a donor has requested anonymity, the University and the Foundation may publicly acknowledge donor names and donation amounts. In all other circumstances, the Foundation and the University shall not disclose the names, contact information, asset information, or other identifiable information of donors or potential donors to anyone other than University or Foundation staff, Foundation Trustees and campaign leadership, and lawyers, accountants or other professional advisors of the University or the Foundation who need to know this information, except as required by court order or applicable law.

UNIVERSITY RESPONSIBILITIES

The University shall pay the Foundation \$_____ to support the operating costs of the services that will be provided by the Foundation pursuant to this Agreement. The University shall pay this amount on a monthly basis due on the last day of each month commencing July 31, 2015.

The President shall include the Foundation CEO as a member of the President's Cabinet.

The University shall provide the Foundation access to and use of the support services listed in (a) - (d) below. The Foundation shall provide reimbursement for such services in accordance with normally established rates charged to University departments.

University Telecommunications Office services, including all telephone and network services, computer systems services, including internet access and central web services. The Foundation agrees it will comply with all State of Oregon and University policies and procedures with respect to telecommunications and internet security.

Printing Department services, including printing, duplicating, mailing services, campus mail and campus freight;

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

Use of materials developed in collaboration with University Marketing and the colleges within the University with the approval of the Vice President of University Marketing.

The University agrees to provide office space for Foundation employees who may be assigned to work within a University unit, subject to the approval of the President or his or her designee. The University will provide at its cost all utilities, office furniture, telephone and network services, computer systems services, including internet access and central web services for such Foundation staff.

The University shall provide Foundation employees with OSU affiliate identification cards. Foundation employees shall be entitled to parking, transportation, admittance to athletic

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events, access to the OSU libraries, and participation in staff recreation and fitness programs at the same rates that such benefits and facilities are made available to the University employees.

The 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. The University has an agreement with the Oregon State Police for law enforcement services, and the University will include the leased building within the patrol areas covered by that agreement.

The University shall make available for use by the Foundation the University equipment listed on inventory located at the Foundation. During the period of use, Foundation will maintain, make reasonable repairs, and insure such property against property loss and liability. The Foundation may discontinue use and return such property at any time with normal wear and tear at no cost of penalty assessed.

The University shall assign OSU student employees to perform services for the University at the Foundation. These services may include, but shall not be limited to, phone banking, data entry, and gift receipting.

FOUNDATION RESPONSIBILITIES

The Foundation shall maintain its status as an independent Oregon nonprofit corporation created to raise, manage, distribute, and steward private resources to support the mission and priorities of the University.

The Foundation is responsible for the control and management of all assets of the Foundation, including the prudent management of all gifts consistent with donor intent.

The Foundation is responsible for the employment, compensation, and evaluation of all its employees, including the Foundation CEO. The Foundation agrees that President will be included as a prominent participant in discussion and decision making regarding the hiring and performance assessment of the Foundation CEO. The Foundation further agrees that it will require significant and effective collaboration and communication with University leadership as part of the job descriptions for Senior Foundation leadership. The Foundation agrees to solicit feedback from relevant University leadership in making hiring decisions. The Foundation also agrees to engage University leadership as appropriate in the evaluations of senior Foundation employees.

The Foundation shall create an environment conducive to increasing levels of private support for the mission and priorities of the University. In particular:

The Foundation is responsible for planning and executing comprehensive fundraising and donor-acquisition programs in support of the strategic priorities identified by the President and determined in accordance with Section 1.4. These programs include annual giving, major gifts, planned gifts, special projects, and campaigns, as appropriate.

The Foundation shall establish, adhere to, and periodically assess its gift-management and acceptance policies. It will promptly acknowledge and issue receipts for all gifts and provide appropriate recognition and stewardship of such gifts.

The Foundation shall establish and enforce policies to protect donor confidentiality and rights.

The Foundation agrees to manage assets for the benefit of the University as follows:

The Foundation will receive, hold, manage, invest, and disburse contributions of cash, securities, real property, patents, copyrights, and other forms of property, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred-gift instruments.

The Foundation will establish prudent asset allocation, disbursement, and spending policies that adhere to applicable federal and state laws including the Oregon law versions of the Uniform Prudent Investor Act (UPIA) and the Uniform Prudent Management of Institutional Funds Act (UPMIFA).

The Foundation will establish internal controls and other enterprise risk management practices commensurate with the fiduciary responsibility of the Foundation's Board of Trustees.

The Foundation shall provide financial support to the University by disbursing funds to the University consistent with University policies. Examples of such support are: providing scholarships to OSU students, funding faculty research, supporting University construction, funding faculty chairs, purchasing equipment and supplies for the University, funding student and faculty travel, providing a discretionary fund for the President for use in supporting the business of the University, and supporting other educational and charitable activities of the University. All such support shall be in accordance with the Foundation's exempt purpose.

The Foundation shall provide support for development activities of the University's academic leadership. For example, the Foundation development staff will assist with the planning and support for visits to potential donors, and provide follow-up support and stewardship to assist University leadership in donor cultivation and relationship-building.

With prior approval by the President, the Foundation may engage in advocacy in support of the University's mission and strategic priorities.

With prior approval by the President, the Foundation may engage in entrepreneurial activities that are in addition to its ordinary asset management activities. The Foundation shall engage in such enterprises only to the extent it deems prudent within the confines of its fiduciary obligations.

The Foundation shall maintain and operate the donor and alumni database for the support of the University. The Foundation shall handle all gift receipting and reporting software, and other financial reporting software necessary to perform its obligations under this Agreement. The Foundation agrees that it will use any information provided by the University solely for carrying

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out its responsibilities under this Agreement and that it will use all such information in compliance with FERPA, Oregon law, and University policy.

With prior approval by the President, the Foundation may create additional entities in furtherance of its exempt purpose. The Foundation may control and operate these approved entities in furtherance of its exempt purpose. Currently, the Foundation controls three separately incorporated entities associated with the Foundation and previously approved by the President:

- **Oregon 4-H Foundation**, a separately incorporated Oregon nonprofit corporation for which the Foundation is the sole member;
- **Trysting Tree Golf Club, Inc.**, a separately incorporated Oregon for profit corporation for which the Foundation is the sole shareholder; and
- **The Beaver Caucus**, a separately incorporated Oregon nonprofit corporation for which the Foundation is the sole member.

AUDITS

The Foundation will engage a certified public accounting firm to serve as the Foundation's independent auditor. This firm will conduct a full and complete annual audit of Foundation finances and operations.

The Foundation agrees to provide the following material and information to the President on or before September 30 of each year:

Audit report;

A list of Foundation trustees and officers;

A list of Foundation executive staff;

The name of the Foundation's legal counsel; and

A resolution of the Foundation's Board of Trustees affirming acceptance of the conditions of recognition by the University. This acceptance may be in the form of affirming this Recognition and Support Agreement after execution.

The Foundation shall permit the President to inspect and audit all Foundation books and records at reasonable times. The Foundation shall provide such reports and information on its financial status and operations as required by the President in order to assure conformance with this Agreement and University policies.

MISCELLANEOUS PROVISIONS

Term. This Agreement shall be effective July 1, 2015 through June 30, 2016.

Amendments. This Agreement may be amended at any time by a writing signed by both Parties.

Termination. The University may terminate this Agreement without further liability by giving the Foundation not less than 90 days' prior notice.

Indemnification. To the extent permissible by law, each Party shall indemnify the other Party and the other Party's officers, board members, employees or agents for any third-party claims, actions, suits or proceedings that arise out of the acts or omissions of the Party in performing its obligations under this Agreement. However, neither Party shall be required to indemnify the other Party for any liability arising out of the wrongful acts of the other Party, or the other Party's officers, board members, employees or agents. Each Party may participate in its own defense with counsel of its own choosing.

1.5 **Merger.** This Agreement constitutes the entire agreement between the Parties and, except for those written agreements referenced in this Agreement, supersedes all prior agreements and understandings (whether written or oral) between the Parties. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties. Both Parties acknowledge having read and understood this Agreement, and agree to be bound by its terms and conditions.

Execution. This Agreement may be executed in one or more counterparts, each of which shall be deemed original, but all of which together shall constitute one and the same Agreement.

[Signature Page Follows]

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OSU FOUNDATION

By: _____
J. Michael Goodwin, President/CEO

Date: _____

OREGON STATE UNIVERSITY

By: _____
Edward Ray, President

Date: _____

Attachment 3

ORIGINAL

CONTRACT BETWEEN
OREGON STATE
UNIVERSITY AND
AGRICULTURAL RESEARCH FOUNDATION

AGREEMENT TO PROVIDE SERVICES AND FACILITIES
IN EXCHANGE FOR FINANCIAL SUPPORT

THIS AGREEMENT is made and entered into between Oregon State University and the Agricultural Research Foundation. This agreement supersedes all previous agreements between the parties as well as amendments thereto, if any.

RECITALS:

1. Oregon State University, hereinafter referred to as UNIVERSITY, is an institution of higher education existing under and by virtue of ORS Chapter 352.
2. Agricultural Research Foundation, hereinafter referred to as FOUNDATION, is a charitable, scientific and educational nonprofit corporation established on October 25, 1934 and existing under the laws of the State of Oregon relating to such corporations (Sec 77-401, Oregon compiled laws Annotated), and by virtue is subject to the Oregon Nonprofit Corporation Law (Oregon Revised Statutes, Chapter 61) for the purpose stated in its Articles of Incorporation, including the primary purpose of supporting UNIVERSITY. The FOUNDATION continues to maintain tax exempt status pursuant to Section 501 (c) (3) of the U.S. Internal Revenue Code.
3. FOUNDATION has been recognized pursuant to Division 46 of the Oregon State University Standards. FOUNDATION fully satisfies the eligibility requirements set forth in OSU Standard 580-046-005(2).
4. The President of UNIVERSITY has recognized FOUNDATION as provided by OSU Standard 580- 046-005(1).
5. FOUNDATION has accepted recognition as provided by OSU Standard 580-046-010(3)
6. It is the purpose of this contract and the representations made by each party pursuant thereto to comply with the requirements of OSU Standard 580-046-035(7) and to set forth the manner in which the UNIVERSITY is to provide support to FOUNDATION and which the 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.

- 1.1 FOUNDATION may in connection with its lawful business and activities, use the name of the UNIVERSITY as well as the UNIVERSITY's logo, informal seal, and other symbols and marks of the UNIVERSITY.
- 1.2 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.

2.00 FOUNDATION INDEPENDENCE FROM UNIVERSITY

- 2.1 UNIVERSITY agrees to encourage and maintain the independence of the 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.

3.00 UNIVERSITY OFFICERS AND EMPLOYEES AS NON-VOTING MEMBERS OF FOUNDATION'S GOVERNING BODIES

- 3.1 The President of the UNIVERSITY, or designee, shall be an ex officio non-voting member of the FOUNDATION Board of Trustees.
- 3.2 Other UNIVERSITY employees who are ex officio non-voting members of the FOUNDATION'S Board of Trustees are the Dean of the College of Agricultural Sciences/Director of Agricultural Experiment Station, or designee.
- 3.3 FOUNDATION agrees to cooperate with the President and/or the President's designee to permit compliance with OSU Standard 580-046-030(2), including without limitation provision of records and reports sufficient to enable the President to monitor compliance with Division 46.

4.00 COOPERATION BETWEEN FOUNDATION AND UNIVERSITY

- 4.1 FOUNDATION agrees, in accepting gifts of all kinds, to obtain UNIVERSITY approval of any restrictive terms and conditions, and to coordinate with the Oregon State University Foundation ("OSU Foundation") regarding funding goals, programs, or campaigns proposed by the OSU Foundation. 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.
- 4.2 FOUNDATION shall annually provide to the President a summary of gifts received.
- 4.3 FOUNDATION agrees that no UNIVERSITY funds, including funds resulting from a UNIVERSITY activity, shall be deposited in a FOUNDATION account.
- 4.4 UNIVERSITY and FOUNDATION agree to periodically review existing guidelines and practice regarding the identification of funds so that the intended donee, whether UNIVERSITY or FOUNDATION, actually receives the funds, subject to the following:
- 4.4(1) If the FOUNDATION is the intended recipient of funds made payable to the UNIVERSITY, the funds shall first be deposited in a state account and then transferred to the FOUNDATION.
- 4.4(2) Funds payable or gifts made to the UNIVERSITY shall not be transferred to the FOUNDATION unless accompanying documents demonstrate that the FOUNDATION is the intended recipient.
- 4.4(3) If the FOUNDATION deposits funds in its accounts or receives other gifts intended for the UNIVERSITY, the FOUNDATION shall transfer those funds or gifts to the UNIVERSITY.

To assist in this review, FOUNDATION agrees to provide UNIVERSITY quarterly reports of receipts broken out by gifts, grants, and contracts. FOUNDATION shall provide such reports no later than twenty days after each quarter ending March 31, June 30, September 30, and December 31 to the President, Vice-President for Finance and Administration and Vice- President for Research of University.

5.00 LIMITATIONS ON PAYMENTS BY FOUNDATIONS

- 5.1 FOUNDATION agrees not to make any payments to a UNIVERSITY employee except as permitted by OSU Standard 580-046-035(6).
- 5.2 UNIVERSITY agrees to pay out all moneys it receives under OSU Standard 580-046-035(6) in the manner provided by OSU Standard 580-046-035(6) (c).

6.00 UNIVERSITY SUPPORT OF FOUNDATION

- 6.1 UNIVERSITY shall provide FOUNDATION with rent-free office space in the University Plaza Building Suite 320. UNIVERSITY shall provide utilities and janitorial services to FOUNDATION at no cost.
- 6.2 UNIVERSITY shall provide support services to FOUNDATION of the type provided to UNIVERSITY departments on a cost basis including, but not limited to; access to the UNIVERSITY telephone system, maintenance from Facilities Services, Printing Department, Motor Pool, University mail system, and Surplus Property sales. FOUNDATION shall provide reimbursement for such services in accordance with normally established rates for UNIVERSITY departments.
- 6.3 UNIVERSITY shall provide FOUNDATION employees with staff identification cards. FOUNDATION employees shall be entitled to parking, admittance to athletic events, access to Valley Library, and participation in staff recreation/fitness programs at the same rate that such benefits and facilities are made available to UNIVERSITY employees.
- 6.4 The UNIVERSITY may provide other limited and reasonable support to the FOUNDATION consistent with the support outlined above from funds otherwise available to the UNIVERSITY.

7.00 FOUNDATION SUPPORT OF UNIVERSITY

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

- 7.1(1) Receiving, investing, and administering funds for charitable, scientific and educational activities of the UNIVERSITY.
- 7.1(2) Cooperating with the OSU Foundation in its fund raising activities and development programs with individuals, corporations, foundations and other private organizations.
- 7.1(3) Supporting the UNIVERSITY by means of funds donated to FOUNDATION and consistent with such restrictions as meet UNIVERSITY guidelines or have been approved by UNIVERSITY. Designated funding shall be provided in accordance with donors' wishes. 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 in carrying out other activities of the UNIVERSITY

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involving educational, research, cultural, scientific, public service, and other charitable activities and lawful purposes of UNIVERSITY. All such support shall be in accordance with FOUNDATION purposes as stated in its Articles of Incorporation and Bylaws, and in accordance with Division 46.

- 7.1(4) Performing other acts as may be deemed appropriate for carrying out the purposes of the FOUNDATION.

8.00 AUDITS, LEGAL AND REPORTING

- 8.1 FOUNDATION will engage a certified public accounting firm mutually acceptable to FOUNDATION and UNIVERSITY to serve as FOUNDATION'S independent auditor, 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.
- 8.2 FOUNDATION agrees to provide annually by September 21:
- 8.2(1) Audit Report
 - 8.2(2) List of FOUNDATION officers, directors and trustees
 - 8.2(3) List of FOUNDATION Managers
 - 8.2(4) Names of officers, directors and trustees of all entities to which OSU Standard 580- 046-020(4) and (5) are applicable.
 - 8.2(5) A resolution of the Board of Directors affirming acceptance of the conditions of recognition by the UNIVERSITY in accordance with OSU Standard 580-046-005(4) (b) and 580-046-010(3).
- 8.3 FOUNDATION agrees to comply with OSU Standard 580-046-040(2) (b) by permitting the President, using UNIVERSITY or Oregon State University internal auditors, to inspect and audit all FOUNDATION books and records at reasonable times at no cost to the FOUNDATION. The FOUNDATION shall provide such reports of and information on its financial status and operations as required by the UNIVERSITY President in order to assure conformance by the UNIVERSITY and the FOUNDATION with these Standards.

9.00 COMPLIANCE WITH OSU STANDARDS

- 9.1 Both the UNIVERSITY and FOUNDATION agree to comply with the OSU Standards pertaining to the relationship between UNIVERSITY and FOUNDATION, including amendments thereto adopted by the Board. 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 Oregon State University Board of Trustees at which they are considered for adoption.

10.00 TAX COMPLIANCE

- 10.1 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).

11.00 AMENDMENTS

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

12.00 TERM

12.1 The term of this agreement shall be from July 1, 2015 to June 30, 2018.

13.00 TERMINATION DUE TO NONAPPROPRIATION OF FUNDS

13.1 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.

14.00 RECIPROCAL INDEMNIFICATION

14.1 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.

15.00 MERGER

15.1 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 caused these presents to be executed by their appropriate officers the day and year first written above.

AGRICULTURAL RESEARCH FOUNDATION

By: Philip J. Walker PHILIP J. WALKER Date: 6-2-15
President

OREGON STATE UNIVERSITY

By: Edward J. Ray Date: 6/24/15
President