

Memorandum of Understanding

This Memorandum of Understanding (MOU), dated November 19, 2010, is between the Board of Regents, Texas State University System (Board) and the Texas State University-San Marcos Research Foundation (Foundation).

1. Background and Purpose

- 1.01. The Foundation is a Texas nonprofit corporation, founded in June 2009. It is a "Private Support Organization" as described in Chapter IX of the Board's Rules and Regulations because its sole purpose is to benefit Texas State University-San Marcos (University). The Foundation's purpose includes furthering scientific research and education at the University.
- 1.02. The Board's Rules and Regulations provide that the Board may, by written contract, provide a Private Support Organization with office space, telephone service, utilities and the use of other equipment and facilities. These Rules also provide that the Board may authorize officers and employees, as a part of their regular duties, to perform administrative tasks and to solicit funds for the Private Support Organization.
- 1.03. The purpose of this MOU is to establish a relationship between the Board and the Foundation that will meet the requirements of the Board's Rules and Regulations and will commit the Foundation to perform its functions solely for the benefit of the University.

2. Approval of Foundation's Organization

- 2.01. On June 5, 2009 the Board authorized the Foundation's establishment in a board order adopted at its meeting on that date.
- 2.02. The Board notes that a majority of the Foundation's directors are officers or employees of the University.
- 2.03. The Board has approved the bylaws and other governing instruments of the Foundation, which specify the selection procedures for the Foundation's directors.
- 2.04. The Board has determined that this MOU serves a public purpose; that it provides adequate consideration to the public; and that the Board has sufficient control over any public resources provided by this MOU to assure that the public purpose is met.

3. Term

- 3.01. This MOU is effective as of September 1, 2010 and will continue in effect until either party terminates it for any reason by giving the other party at least 90 days' written notice of termination.
- 3.02. Upon termination of this MOU the Foundation will, after settling its debts and obligations, return all University property to the University and pay all of its funds to the University.

4. Foundation's Duties and Obligations

- 4.01. Until it receives further authorization from the University, the Foundation will follow these restrictions on the gifts and grants that it receives:
 - a. The Foundation will accept gifts and grants only from entities that require that its grantees be tax-exempt under section 501(c)(3) or another section of the Internal Revenue Code. The Foundation will not accept gifts or grants from entities that

provide their gifts or grants directly to the University without the University's prior written approval.

- b. The Foundation will only execute contracts, research agreements, and other documents that call for it to work projects related to the development, management, or commercialization of intellectual property unless it receives further instructions from the University.
 - c. The Foundation will, at least annually, provide the University with an amount of the indirect costs that it receives as agreed between the Foundation and the University.
- 4.02. During the term of this MOU and subject to the restrictions in section 4.01, the Foundation will support the University by: (1) acquiring sponsored research funds from public and private sources; (2) managing those funds as requested by the University; (3) soliciting donations to support the Foundation's activities; (4) pursue appropriate legal protection for proprietary intellectual property; (5) hold and manage intellectual property assets; and (6) promote commercialization of research products and transfer of technologies to appropriate partners for their further development and commercialization.
- 4.03. The Foundation will submit an annual report to the President of the University. The President will then submit the report to the Board.
- 4.04. The University or the Board may, from time to time, audit the Foundation's books and records.
- 4.05. The Foundation will not pay a salary or benefit to an officer or employee of the University who serves in a management or decision-making position unless approved by the Board. This restriction does not apply, however, to reimbursement for legitimate and reasonable expenses incurred while rendering services to the Foundation.
- 4.06. The Foundation will submit any proposed changes to its bylaws or other governing instruments to the Board for approval before the Foundation adopts those changes unless the Foundation determines that because of exigent circumstances it must adopt changes before receiving the Board's approval.
- 4.07. Any student activity related to the Foundation will be appropriate for the students' educational experience and consistent with the University's mission.

5. Board's Authority

- 5.01. The Board delegates to the University responsibility for assigning University employees to aid in the mission and work of the Foundation. The Foundation may, from time to time, enter into agreements directly with the University in order to carry out the Foundation's work and the purpose of this MOU, provided that those agreements do not conflict with this MOU.
- 5.02. The Board delegates to the University the authority to provide the Foundation with office space, telephone service, computers, utilities, and the use of other equipment and facilities for the Foundation's use.

6. General Provisions

- 6.01 Any notices that either party may be required to deliver to the other will be delivered personally or via United States Postal Service as follows:

To the Board:

Vice Chancellor and General Counsel
The Texas State University System
Thomas J. Rusk Building
200 East 10th Street, Suite 600
Austin, TX 78701-2407

To the Foundation:

President
Texas State University-San Marcos Research Foundation
c/o Provost and Vice President for Academic Affairs
601 University Drive
San Marcos, TX 78666

- 6.02. The parties will construe this agreement under the laws of the State of Texas and will perform all their obligations in Hays and Travis Counties, Texas. They will use the procedures in Texas Government Code Chapter 2260 to resolve any disputes that they cannot resolve informally.
- 6.03. This is the only agreement of the parties respecting this subject, and it supersedes any prior written or oral agreements between the parties regarding this subject.
- 6.04. The parties may not amend this agreement except in writing, dated after the date of this agreement and signed by each party's representative.
- 6.05. Neither party may assign its rights or obligations under this agreement without the prior written consent of the other.

ATTEST:


Secretary, Texas State University-San Marcos
Research Foundation



President, Texas State University-San Marcos
Research Foundation

Examined, Approved, and Recommended:

ATTEST:


Chair, Local Committee


President
Texas State University-San Marcos


Chancellor
The Texas State University System


Chair, Board of Regents
The Texas State University System