TAB 6
DOCKET ITEM:       6

DATE:              June 26, 2014

TITLE: Approval of Resolution Regarding Relationship with Portland State
University Foundation.

COMMITTEE ACTION: None. This request has not been considered by a committee.

SUMMARY OF ITEM: The Portland State University Foundation (PSUF) has been recognized as
PSU's institutional foundation since 1963. The relationship between PSU and PSUF has been
governed since at least 1989 by administrative rules of the State Board of Higher Education (OARs
580-046-0005 through 580-046-0045). With the transfer of authority from the State Board of Higher
Education to the Portland State University Board of Trustees on July 1, 2014, it is appropriate for
this Board to itself recognize PSUF as the official institutional foundation and to adopt a policy
governing that relationship.

In addition, the University Advancement function within the University is
merging into PSUF as of July 1, 2014. This action implements the work and
recommendations of a joint PSU-PSUF task force and is intended to reduce
administrative costs, enhance efficiencies and better position the University
for a major fundraising campaign and much greater levels of philanthropy.
The merger also made it appropriate and necessary to review and revise the
rules regarding the relationship between the University and Foundation.

The attached resolution:

1. Reaffirms the recognition of PSUF as the official institutional
   foundation;
2. Approves the attached policy regarding the Relationship with the
   Portland State University Foundation; and
3. Replaces Oregon Administrative Rules 580-046-0005 through 580-046-
   0045.

The proposed new policy retains key elements of the administrative rules.
Among other things, the proposed policy:

1. Describes the mission of the institutional foundation;
2. States that there may be only one institutional foundation at a time;
3. Requires the institutional foundation to maintain appropriate nonprofit and tax-exempt status;
4. Requires and affirms the independence of the institutional foundation from the University;
5. Designates the institutional foundation as the repository for private gifts made to the University;
6. Requires the President of the University to enter into a Recognition and Support Agreement with the institutional foundation and to include certain required provisions in the Agreement;
7. Requires the institutional foundation obtain an annual independent audit of its financial and operational records;
8. Requires the University and institutional foundation jointly develop policies regarding the acceptance of restricted gifts and other matters;
9. Requires that the institutional foundation’s net assets be distributed to the University or to another nonprofit charitable entity designated by this Board in the event of withdrawal of recognition or dissolution of the institutional foundation;
10. Permits the University to extend certain benefit and privileges to employees of the institutional foundation, such as the tuition benefit available to University employees;
11. Permits the institutional foundation to supplement University employee salaries, with the approval of either the President or this Board; and
12. Permits the President to revoke recognition of the institutional foundation and provides a process for the foundation to appeal that decision to this Board.

SUMMARY OF COMMITTEE DISCUSSION: None.

REQUESTED BOARD ACTION: A motion approving the proposed resolution policy entitled “Relationship with the Portland State University Foundation.”

ATTACHED DOCUMENTS: Resolution Regarding Relationship with Portland State University Foundation (with Exhibit A: Policy).

BACKGROUND READINGS:
1. Recognition and Support Agreement Between Portland State University and PSU Foundation.
2. Oregon Administrative Rules 580-046-0005 through 580-046-0045
RESOLUTION REGARDING RELATIONSHIP
WITH PORTLAND STATE UNIVERSITY FOUNDATION

BACKGROUND

A. The Portland State University Foundation (the "Foundation") is a private, nonprofit corporation organized under the Oregon Nonprofit Corporations Act and exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Since 1963, the Foundation has played a critical role enhancing the development of Portland State University. The purpose of the Foundation is to support and promote the mission of Portland State University.

B. The relationship between the University and the Foundation was authorized and governed by administrative rules adopted by the State Board of Higher Education when the state board was responsible for governance of the University. Following the establishment of the University's Board of Trustees, it is appropriate for this Board to establish a policy regarding the critically important relationship between the University and the Foundation. It is also important that this Board develop a strong and effective relationship with the Foundation and with the Foundation's Board of Trustees.

C. Effective July 1, 2014, the functions of the University’s Office of University Advancement will be transferred to the Foundation in order to enhance efficiencies and to better position the University and the Foundation to move a larger number of constituencies to extraordinary levels of engagement, advocacy and support for the benefit of the University. This Board supports these efforts and recognizes the critical role of philanthropy to the success of the University.

RESOLUTION

Now, therefore, be it Resolved by the Board of Trustees, that the Portland State University Foundation is recognized as the official institutional foundation of Portland State University; and the policy entitled “Relationship with the Portland State University Foundation,” attached as Exhibit A to this Resolution, is approved. The Policy replaces Oregon Administrative Rules 580-046-0005 through 580-046-0045, previously adopted by the State Board of Higher Education, which shall have no further force or effect at the University.

This Resolution is effective July 1, 2014.

APPROVED:

__________________________
Secretary to the Board

__________________________
Date
Relationship with the Portland State University Foundation

Recognition of Portland State University Foundation

Since 1963, the Portland State University Foundation (PSUF) has enhanced the development of Portland State University. PSUF was recognized by the President of the University as the official institutional foundation pursuant to the rules of the former State Board of Higher Education. Subject to the terms of this policy, the Portland State University Board of Trustees reaffirms PSUF’s status as the official institutional foundation and recognizes the critical role played by PSUF in efforts to promote and strengthen the University for current and future generations.

Roles and Coordination

The University, under the direction of the Board of Trustees (the “Board”), is responsible for establishing the University’s mission and strategic direction, including its academic, research, operational and fundraising priorities. The institutional foundation is a critical partner in the implementation and support of those priorities. The advancement of the University requires effective communication and collaboration between the University and the institutional foundation and between their respective governing boards, as well as the alignment of goals and purposes.

Terms of Recognition of an Institutional Foundation

The Board’s recognition of an institutional foundation is subject to the following requirements:

1. The purpose of an institutional foundation is to raise and manage private resources supporting the mission and priorities of the University, and to contribute to institutional excellence.

2. Only one entity may be recognized as the official institutional foundation at a time.

3. The institutional foundation shall be required, at all times, to maintain status as an independent nonprofit corporation under the Oregon Nonprofit Corporation Act and maintain tax exempt status under Section 501(c)(3) of the Internal Revenue Code and other similar Oregon statutes, as those laws may be amended from time to time. The institutional foundation shall be governed by an independent governing board, as provided in the foundation’s bylaws.

4. An institutional foundation is to operate in a manner that is independent of the University and consistent with the fiduciary obligations of the institutional foundation. The operations and assets of the institutional foundation are not subject to control by the
University. Both the University and the institutional foundation are expected to diligently preserve the independence of the institutional foundation and avoid any appearance that the University controls the institutional foundation.

5. A recognized institutional foundation is to be the repository of all private gifts made in support of the University. To the greatest extent possible, gifts to the University are to be construed as gifts intended for the institutional foundation. The institutional foundation and the University shall jointly establish naming policies and policies regarding the acceptance of restricted gifts for scholarships, chairs, and other endowed or restricted purposes.

6. The University President and the institutional foundation shall enter into a mutually acceptable Recognition and Support Agreement. The Recognition and Support Agreement shall, among such other terms as may be appropriate:
   - Delineate the responsibilities of the University and the institutional foundation regarding fundraising priorities and activities, management of gifts, maintenance of records, and other necessary activities.
   - Provide a mutually agreeable level of direct financial and in-kind support from the University to the institutional foundation to enable the foundation to successfully raise and manage private funds for the University. Such support may include, without limitation, personnel and services, office and meeting space, and information technology and telecommunications services.
   - Include provisions requiring the institutional foundation to obtain an annual independent audit of the foundation’s financial and operational records and to provide the University President with a copy of the annual audited financial statements, including any management letters.
   - Require the institutional foundation and the University to jointly develop policies or a process regarding the acceptance of restricted gifts for the benefit of the University.
   - Require the institutional foundation to disclose to the University any terms, conditions, or restrictions imposed by the donor to the University on a gift.
   - Permit the institutional foundation to utilize the University’s name and trademarks as may be appropriate.
   - Permit the creation of affiliated entities to support particular units or activities within the University.
   - Provide that upon withdrawal of recognition as the official institutional foundation, or upon dissolution, the institutional foundation’s net assets shall, within the limitations imposed by legal and fiduciary responsibilities, be distributed in full to the University or to another nonprofit charitable entity designated by the Board.

7. The Recognition and Support Agreement may allow employees of the institutional foundation to receive benefits or privileges commonly provided to University employees, such as a University tuition benefit for foundation employees and their dependents.
8. The institutional foundation may supplement the salary of University employees. Any salary supplement for the benefit of the University President must be approved by the Board. Any salary supplement for the benefit of other University employees must be approved by the University President.

9. The University President may revoke recognition of an institutional foundation. If the President decides to revoke recognition, the University President shall provide written notice of the intent to revoke recognition to the institutional foundation and the foundation shall have 90 days to resolve the issue to the satisfaction of the President. If after 90 days the institutional foundation is unable to resolve the issue to the satisfaction of the President, the foundation shall have an additional 30 days to appeal the revocation of recognition to the Board. If an appeal is filed, the institutional foundation shall have the right to be heard at a meeting of the Board called for that purpose.

APPROVED BY BOARD OF TRUSTEES
June __, 2014
Recognition and Support Agreement
Between
Portland State University and PSU Foundation

THIS AGREEMENT is between the State of Oregon acting by and through the State Board of Higher Education on behalf of Portland State University (the “University”) and the Portland State University Foundation, an Oregon nonprofit corporation (the “Foundation”), collectively referred to as the Parties.

RECITALS

The Foundation is an independent Oregon nonprofit corporation, recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code. The Foundation was organized for the purpose of supporting and promoting the mission of the University.

The Foundation exists to raise and manage private resources supporting the mission and priorities of the University and to contribute to institutional excellence.

The Foundation is dedicated to assisting the University by fostering a culture of philanthropy, growing the endowment, and providing financial and other support for long-term academic and other institutional priorities.

The University is an institution of higher education and a member of the Oregon State System of Higher Education. Effective July 1, 2014, as provided in Enrolled Senate Bill 270 (2013), the University will be an institution of higher education governed by the Portland State University Board of Trustees. The Portland State University Board of Trustees is responsible for overseeing the mission, leadership and operations of the University.

AGREEMENT

The Parties agree as follows:

SECTION 1: RELATIONSHIP BETWEEN FOUNDATION AND UNIVERSITY

1.01 The University designates the Foundation as the repository of all private gifts made in support of the University.

1.02 All initiatives for private fundraising shall be administered by and through the Foundation in coordination with the University. The Foundation is responsible for planning and executing comprehensive fundraising programs in support of the strategic priorities identified by the University President.

1.03 The Foundation and the University shall jointly establish naming policies, and policies regarding the acceptance of restricted gifts for scholarships, chairs, and other endowed or restricted purposes.
1.04 Consistent with its mission to help to advance the plans and objectives of the University, the Foundation may use the name of the University as well as the logo and other symbols and marks of the University.

1.05 The University recognizes that the Foundation is a separate, private nonprofit corporation with the authority to keep all records and data confidential, consistent with the law. The Foundation recognizes that University is a public institution and that the Foundation’s primary exempt purpose is to support the University.

SECTION 2: UNIVERSITY RESPONSIBILITIES

2.01 The University Board of Trustees is responsible for overseeing the mission, leadership, and operations of the University. The University Board of Trustees is legally responsible for the performance and oversight of all aspects of University operations.

2.02 The University Board of Trustees is responsible for the employment, compensation, and evaluation of all University employees, including the University President.

2.03 The University President is responsible for communicating on a regular basis the priorities and long-term plans of the University, as approved by the University Board of Trustees, to the Foundation.

2.04 The University President shall serve as an ex-officio voting member of the Foundation Board of Trustees and shall assume a prominent role in the Foundation’s fundraising activities.

2.05 It is the expectation of the Parties that the Foundation President/CEO will be appointed by the University President as the University’s Vice President of Advancement and will serve as a member of the University President’s cabinet and senior administrative team. The appointment of the Foundation President/CEO as the University’s Vice President of Advancement is solely within the discretion of the University President. The University President may confer additional titles on the Foundation President/CEO, and may remove such titles at any time. The University President shall provide input to the Foundation to assist with the establishment of annual performance metrics for the Foundation President/CEO and shall provide input at least annually on the performance of the Foundation President/CEO.

2.06 The University shall include the Foundation as an active and prominent participant in strategic planning for the University.

2.07 The President, Deans, and other senior administrators of the University will work closely with the leadership of the Foundation Board of Trustees and the Foundation CEO/President to identify, cultivate, solicit, and steward prospects for private gifts.

2.08 The University shall establish and enforce policies that support the Foundation’s ability to respect the privacy and confidentiality of donor records.
2.09 The University shall ensure that gift funds and other resources received from the Foundation are used in compliance with donor intent.

2.10 The University shall provide the Foundation employees with PSU staff identification cards at the same rates as the University employees. The Foundation employees shall be entitled to parking, transportation, admittance to athletic events, access to the PSU libraries, preferential access to the Helen Gordon Child Development Center, staff fee privileges for Portland State University classes and programs, and participation in staff recreation and fitness programs at the same rates and on the same terms that such benefits and facilities are made available to the University employees.

2.11 The University and the Foundation shall evaluate and agree upon an amount of financial support to be provided by the University to the Foundation to support the operating costs of the services to be provided by the Foundation (the “Annual Support”). For fiscal year 2014-2015, the Annual Support is $5,909,513. For fiscal year 2015-2016 this amount will be reduced by $100,000. The amount of Annual Support shall be indexed for inflation and may be evaluated by the Parties each year and increased or decreased by the University. It is the goal of the Parties to provide the Foundation with stable and adequate financial support in order to facilitate the performance of services under the Agreement. In the event the University experiences financial hardship which requires a reduction in the Annual Support, the Foundation expects to make a corresponding reduction to the level of service to the University contemplated by this Agreement. In that event, the Parties agree to establish new performance metrics based on the reduced level of funding. The Parties anticipate that the Foundation will enhance its own revenue generating capacity over time such that the proportion of Annual Support to the Foundation’s total revenues will decrease.

2.12 The Parties anticipate that amounts provided by the University in addition to the Annual Support may be necessary and appropriate to fund campaign activities or other fundraising initiatives.

2.13 The University shall pay the Annual Support to the Foundation one-third by July 1 of the new fiscal year, one-third by October 1, and the final one-third by January 1. All other amounts of support shall be paid as agreed by the University and the Foundation.

2.14 The University shall provide the Foundation with access to its student and financial information system to allow the Foundation to fulfill its obligations under this Agreement. The Foundation acknowledges that personally identifiable information regarding University’s students is subject to the protections and limitations of the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g, and its implementing regulations, 34 CFR Part 99 (hereinafter “FERPA”) and University’s Student Records Policy, OAR 577, Division 30. Foundation agrees that its use of personally identifiable student information will be for the purpose of fulfilling its obligations under this Agreement only and that the use and redisclosure of student information will comply with FERPA and University Student Records Policy.
2.15 The University shall provide the Foundation employees who are stationed in University departments with furniture, office supplies and equipment, network services, telecommunications access, and staff support at a level commensurate with University employees who have similar job duties.

SECTION 3: FOUNDATION RESPONSIBILITIES

3.01 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 will operate in compliance with all federal tax laws.

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

3.03 The Foundation is responsible for the performance and oversight of all aspects of its operations pursuant to its fiduciary responsibilities, including expectations of individual board members based upon ethical guidelines and policies. The Foundation will apprise the University of significant changes made to the Foundation’s bylaws.

3.04 The Foundation shall establish and enforce policies to identify and manage potential conflicts of interest and ensure that Foundation assets do not directly or indirectly unduly benefit persons or entities who engage in transactions with the Foundation.

3.05 The Foundation is responsible for the employment, compensation, and evaluation of all its employees, including the Foundation President/CEO. It is the expectation of the Parties that the Foundation President/CEO will be appointed by the University President as the University’s Vice President of Advancement and will serve as a member of the University President’s cabinet and senior administration team. A reasonable percentage of the Foundation President/CEO’s time will be expended performing duties as a member of the President’s cabinet and senior administration team. The Foundation acknowledges that the appointment of the Foundation President/CEO as the University’s Vice President of Advancement is solely within the discretion of the University President. The Foundation agrees that University President will be included as a prominent participant in discussion and decision making regarding the hiring, establishment of annual performance metrics, assessment and termination of the Foundation President/CEO. In the event of a significant disagreement regarding the employment of the Foundation President/CEO, the University President may invoke the dispute resolution procedures in Section 5.04.

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

(a) The Foundation is responsible for planning and executing comprehensive fundraising and donor-acquisition programs in support of the strategic priorities identified by the University President and University Board of Trustees. These
programs include annual giving, major gifts, planned gifts, special projects, and campaigns as appropriate.

(b) 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.

(c) The Foundation may impose a gift management fee as set forth in a policy or fee schedule and the University shall abide by the policy or fee schedule. The Foundation agrees to consult the University President before making changes to the gift management fee.

(d) The Foundation shall not accept grants from state or federal agencies, except in special circumstances that are approved by the Foundation Board of Trustees and the governmental agency.

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

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

(a) The Foundation will receive, hold, manage, invest, and disburse contributions of cash, securities, 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.

(b) 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).

(c) The Foundation will engage an independent accounting firm annually to conduct an audit of the Foundation’s financial and operational records and will provide the University with a copy of the annual audited financial statements, including any management letters.

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

(e) Revenue received from University activities other than fundraising activities shall not be deposited in a Foundation account, except as provided in Sections 2.11-2.14.

3.08 The Foundation agrees to support the University through entrepreneurial activities as follows:
(a) The Foundation may explore opportunities, including acquisition and management of real estate or personal property on behalf of the University, for future allocation, transfer, or use.

(b) The Foundation may serve as an instrument for entrepreneurial activities for the University and engage in such activities as purchasing, developing, or managing real estate for campus expansion and student housing, or participating in joint ventures that advance the mission of the University. It also may hold licensing agreements and other forms of intellectual property, borrow or guarantee debt issued by their parties, or engage in other activities to increase Foundation revenue with no direct connection to the University.

3.09 The Foundation will provide access to data and records to the University on a need-to-know basis in accordance with applicable laws, Foundation policies, and guidelines. The Foundation will provide copies to the University of its annual report and other information that may be publicly released.

3.10 The Foundation may create separately incorporated entities in furtherance of the Foundation’s exempt purpose or to support particular units or activities of the University. The Parties acknowledge that two separately incorporated entities are currently controlled by the Foundation: Broadway Housing LLC and 2828 Corbett, Inc. The Foundation will consult with the University President before establishing additional separately incorporated entities.

3.11 The Office of Alumni Relations at the Foundation shall provide administrative support for the programs and activities of the PSU Alumni Association.

SECTION 4: FINANCES AND ADMINISTRATION

4.01 Transfer of Funds.

(a) The Foundation shall transfer funds or disburse funds on behalf of the designated entities within the University in compliance with applicable laws, University and Foundation policies, and gift agreements.

(b) The Foundation shall obtain the University’s approval of restrictive terms and conditions before accepting restricted gifts from a donor. University approval may be in the form of a policy or guidelines approving categories of acceptable restrictive terms and conditions.

(c) The Foundation shall disclose to the University any terms, conditions, or restrictions imposed by the donor to the University on a gift. The University will abide by all restrictions and provide appropriate documentation to the Foundation as may be requested.

(d) The Foundation’s disbursements on behalf of the University shall be reasonable business expenses that support the University, are consistent with donor intent, and do not conflict with the law.
(e) The Foundation may supplement the salary of University employees. Any salary supplement for the benefit of the University President must be approved by the University Board of Trustees. Any salary supplement for the benefit of other University employees must be approved by the University President. Compensation for a University employee paid by the Foundation shall be paid to the University, which in turn shall make payment to the employee in accordance with ordinary University practice.

4.02 Funding.

(a) The Foundation, in collaboration with the University, is responsible for establishing a financial plan to help underwrite the cost of Foundation programs, operations, and services.

(b) In consideration for Foundation services including, but not limited, to those enumerated in this agreement, the University will provide the Foundation with fair and reasonable compensation or payment for services as provided in Section 2.11.

(c) In consideration of Foundation services, the University will also provide in-kind support including: various business services, office and meeting space, office furnishings and equipment, access to University facilities, access to the University's information technology and telephone systems, and other support. Where appropriate, the Foundation shall provide reimbursement to the University for the services or facilities in accordance with normally established rates for the University departments. Where possible the University will include the Foundation in price discounts under purchasing contracts with vendors.

SECTION 5: MISCELLANEOUS PROVISIONS

5.01 Term of Agreement. This Agreement shall become effective July 1, 2014 and shall continue through June 30, 2018. The Parties shall meet no later than March 31, 2018 to review and evaluate the relationship and address revisions to the Agreement.

5.02 Amendments. This Agreement may be amended by mutual consent of the Parties at any time. Any amendment must be in writing signed by both Parties.

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

5.04 Dispute Resolution. The Parties will seek to resolve disputes regarding this Agreement through consultation and cooperation at the appropriate staff level within each Party. It is expected that the Parties will make their best efforts to resolve any disputes in an efficient and effective manner. The University President retains the right to revoke recognition of the Foundation as an institutional foundation in accordance with University policy. If the University President decides to revoke recognition, the University President shall provide written notice of the intent to revoke recognition to the Foundation and the Foundation
shall have 90 days to resolve the issue to the satisfaction of the President. If after 90 days the Foundation is unable to resolve the issue to the satisfaction of the President, the Foundation shall have an additional 30 days to appeal the revocation of recognition to the University Board of Trustees. If an appeal is filed, the Foundation shall have the right to be heard at a meeting of the University Board of Trustees called for that purpose.

5.05 **Termination.** Either Party may terminate this Agreement by providing 90 days prior written notice mailed or personally delivered to the senior executive officer of the other Party. Upon revocation of recognition of the Foundation, termination of this Agreement, or dissolution of the Foundation, the net assets of the Foundation shall, within the limitations imposed by legal and fiduciary rights and obligations, be distributed to the University or to another nonprofit charitable corporation as directed by the University Board of Trustees.

5.06 **Reciprocal Indemnification.** Except as otherwise limited by the Oregon Constitution, Article XI, Section 7 and the Oregon Tort Claims Act (ORS 30.260 to 30.300), each Party shall be responsible for its torts and those of its officers, employees or agents arising out of, or in any way connected with, the acts or omissions of each Party under this Agreement.

5.07 **Merger.** This Agreement constitutes the entire agreement between the Parties and, except for those agreements listed on Exhibit A or otherwise specified 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. Such waiver, consent, modification or change if made shall be effective only in the specific instance and for the specific purpose given. Both Parties, by signing below acknowledge having read and understood this Agreement, and agree to be bound by its terms and conditions.

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**Portland State University Foundation**

By: ____________________________

__________________________, Board Chair

Date: ____________________________

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**Portland State University**

By: ____________________________

Wim Wiewel, President

Date: ____________________________

Approved as to form:

By: ____________________________

David Reese, General Counsel

Date: ____________________________
Exhibit A

Agreements Between Foundation and University

The following agreements and policies remain in effect and are not superseded by the Agreement:

- Lease for office space in the Market Center Building at 1600 SW Fourth Avenue
- Real Estate Investments
  - Broadway Housing, LLC (retail, classroom, offices and apartments)
    - Lease, dated July 1, 2008
    - Lease Extension First Addendum, dated June 11, 2013
    - Housing Services and Facilities Agreement, dated October 1, 2008
    - Amendment One to Housing Services and Facilities Agreement, dated August 5, 2013, retroactive to July 1, 2012
  - 2828 Corbett, Inc. (Business Accelerator Building)
    - Commercial Lease, dated December 20, 2004
    - Lease Extension Agreement and Lease Amendment, dated October 30, 2009
- Transition Memorandum of Understanding
580-046-0005

Recognition of a Foundation

(1) An institution president may award recognition as an institution foundation to an entity that meets and maintains the requirements of these rules. Throughout division 046, "president" refers to an institution president and "foundation" refers to an institution foundation.

(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 not provided directly to the institution shall be through a recognized foundation, or affiliated or associated organizations as provided by OAR 580-046-0020(4) and (5).

(3) To be eligible for recognition and to maintain continued recognition, a foundation must:

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

(4) Procedures for Recognition:

(a) An entity seeking recognition as a foundation shall submit to the president for review its:

(A) Articles of incorporation;
(B) Bylaws; and
(C) Any other of its organic or enabling documents.

(b) A president shall notify the governing body of a foundation in writing of recognition and that compliance with these rules is a condition of continued recognition.

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

(5) State System Foundation:

(a) The Chancellor may recognize as the State System foundation an entity created to provide support to the Oregon State System of Higher Education.
(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

580-046-0010

Privileges and Responsibilities of Recognition

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

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

(b) Use of institution resources in the manner provided by OAR 580-046-0035(7).

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

(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

580-046-0020

Institution Foundation Organization, Affiliates, Relationships

(1) A foundation shall be organized and operated pursuant to the Oregon nonprofit corporation law.

(2) A foundation shall obtain and maintain status as a tax-exempt entity pursuant to Section 501(C)(3) of the federal Internal Revenue Code and other similar Oregon statutes.

(3) A foundation's articles of incorporation or other governing documents shall require that, upon its dissolution or withdrawal of recognition, 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 another entity that has been awarded recognition by that institution pursuant to OAR 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 may establish or associate with another entity interested in the institution, provided:

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

(b) Such relationship does not impair or circumvent the requirements of OAR 580-046-0025 and otherwise is consistent with the requirements of these rules; and

(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

580-046-0025

Foundation Independence from Institution

(1) A foundation shall be independent of the institution.

(2) To assure independence, a foundation's governing body, employees, and agents:

(a) Shall not be subject to control by the institution or an institution employee;

(b) Shall not give the appearance that the institution 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 institution employee may be a voting member of a governing body of the institution-recognized foundation.

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

(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).

(2) The president shall monitor foundation activities and institution foundation relationships to ensure compliance with Board of Higher Education rules and periodically shall report thereon to the Chancellor.
(3) A president may establish additional written policies and guidelines applicable to a 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.

(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

Fund and Institution Operational Procedures, Gifts, Accounts, Institution 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 accepting gifts of any kinds, a foundation shall:

(a) Obtain institution approval of any restrictive terms and conditions, and advise donors that a restricted gift for the benefit of the institution may not be accepted without institution approval; and

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

(c) If the foundation deposits funds in its accounts or receives other gifts intended for the institution, the foundation shall transfer those funds or gifts to the institution.

(6) Salaries, consulting fees, loans, perquisites or other benefits provided to or on behalf of an institution employee, other than a student employee, by a foundation shall be:

(a) Approved by the Board of Higher Education when paid to the president or other employee appointed directly by the Board of Higher Education.

(b) Approved by the president in writing, and reported to the Chancellor in instances where subsection (a) of this section does not apply.
(c) Paid by the foundation to the institution, which in turn will make payments to the employee in accordance with normal institution 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) 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.

(7) Institution Contract with Foundation:

(a) An institution may provide pursuant to a written contract limited and reasonable support to the foundation, including but not limited to the cost of utilities and janitorial services and all or part of the salary and related personnel costs of staff support, from funds otherwise available to the institution. As used in these rules, 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 institution.

(b) An institution providing support to a foundation shall contract with the foundation regarding the terms and conditions for implementing OAR 580-046-0010(1) and subsection (7)(a) of this rule and may contract for other purposes consistent with these rules. Any such contract and amendments thereto shall:

(A) 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

(C) Be approved by the president and by the Chancellor or their respective designees.

(c) 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

580-046-0040

Foundation Activities

(1) Financial and other activities of a 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) A 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. The audit report shall be accompanied by a current list of foundation officers, directors, trustees, managers and legal counsel and the officers of any group or entity described in OAR 580-046-0020(4) and (5).

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

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Revocation of Recognition

(1) The president may revoke recognition as provided therein, if the president finds that a foundation or its operation conflict with these rules 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 thereto.

(2) Prior to ordering revocation of recognition, a president shall notify the foundation's governing body of the reasons that could form the bases for revocation of recognition. Within 30 days of receipt of the president's notification, the foundation may in writing propose actions to remedy the deficiencies described by the president.

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

(4) If the president rejects the foundation's proposed actions or finds that they are not adequately implemented, the president may revoke recognition by a written order to the foundation'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.

(6) An order revoking recognition shall terminate the contract provided by OAR 580-046-0035(7) and the privileges of recognition.

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