

Operating Agreement Between

**SAM HOUSTON STATE UNIVERSITY
AND
SAM HOUSTON UNIVERSITY FOUNDATION, INC.**

This Sam Houston University Foundation Agreement (Agreement) is by and between Sam Houston State University (University), a state supported institution of higher education created by Chapter 111 of the Texas Education Code and the Sam Houston University Foundation, Inc. (Foundation), a public, charitable and educational corporation organized and existing under the laws of Texas.

WHEREAS, the University approves the creation, existence and purposes of the Foundation and acknowledges that the University benefits from the Foundation's existence; and

WHEREAS, the Foundation and the University provide certain services for each other that produce mutually beneficial results and want to work together to advance teaching, research, and public service at the University; and

WHEREAS, the University recognizes the Foundation as the primary organization to receive, manage and distribute funds for the benefit of the University,

NOW THEN AND THEREFORE, based upon the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. TERM.** This Agreement shall commence on June 1, 2012, and shall continue until such time as the parties agree or until terminated as provided for herein.
- 2. REVIEW.** The Agreement will be reviewed by the University, the Texas State University System Board of Regents, and the Foundation on or before August 31 of even numbered years.
- 3. TERMINATION.** Either party may terminate this Agreement without cause by providing 180 days written notice. Either party may terminate this agreement for cause if, after written notice of a breach of a term of this Agreement, the breach is not cured within 30 days.
- 4. SERVICES.** Foundation agrees to provide the University the services described in Appendix A which is attached hereto and incorporated herein (Services).
- 5. COMPENSATION.** To assist the Foundation in the performance of the services, the University agrees to provide the Foundation with assistance shown in Appendix B which is attached hereto and incorporated herein (Compensation). The Compensation for each of the services shown in Appendix B is for illustration only and the Foundation shall be free to allocate its resources as it deems best to provide the Services to the University.

6. RELATIONSHIP OF THE PARTIES. The University acknowledges that the Foundation is a separate, independent, not-for-profit, tax-exempt corporation, maintaining the direction over its general and fiscal policies, employees, management of its affairs and operations. Control and disposition of the Foundation's assets are vested in the Foundation Board of Trustees who has the full authority and responsibility for the acceptance, receipt, deposit, investment, reinvestment, and management of all revenues, gifts, contributions, grants, and bequests made of the Foundation. Nothing within this Agreement shall be construed as creating a joint venture or partnership relationship between the parties. The Foundation is and shall be for all purposes under this Agreement an independent contractor.

7. DECLARATION. The Foundation's Board of Trustees commits to focus the organization's activities on those that support the mission of the University. This focus may not be changed without the consent of the Texas State University System Board of Regents. Further, the Foundation will coordinate its activities with the administration of the University to ensure that the mutually desired support is provided and to enhance communication and cooperation between the Foundation and the University.

8. TAX EXEMPT STATUS. The Foundation agrees that it will not engage in any activity that will jeopardize its tax exempt status and agrees that a loss of tax exempt status would be cause for termination of this agreement.

9. INDEMNIFICATION. The Foundation agrees to indemnify and hold harmless The Texas State University System (System), its Board of Regents, the University and its officers, employees and agents from any claim, loss, damage, liability, injury or expense, in whole or in part arising from the activities and/or negligence by the Foundation. To the extent permitted under the law of the State of Texas and without waiving sovereign immunity, the University agrees to hold the Foundation harmless and indemnify its Board of Trustees from any claim, loss, damage, liability, injury or expense, arising from the negligence of the University.

10. ADHERENCE TO LAW. The Foundation agrees that its officers, employees and agents shall abide by all federal, state, and local laws, regulations, and ordinances in performing the obligations of this Agreement. In addition, the Foundation agrees that its officers, employees and agents shall abide by all University policies and procedures, including those relative to conduct while on University property.

11. FACILITY USE. In addition to the services described in Appendix B, the University agrees to allow the Foundation access to spaces available to University organizations under the same terms and conditions, provided such use does not interfere with the ordinary business of the University and is related to the provisions of Services under this Agreement. The University assumes no liability for risk or loss to Foundation property.

12. USE OF UNIVERSITY TRADEMARKS. Except as set forth herein, the Foundation may not use the name or other trademarks of the University without the written consent of the Vice President for University Advancement. All stationery, printed material, services and activities bearing the name or other trademarks of the University must be reviewed and approved by the University in advance.

13. COMMUNICATION. The University commits to keeping the Foundation's President apprised of activities planned at the University to ensure efficient utilization of resources and to enhance communication between the University and the Foundation.

14. GIFT REPORTING. On a monthly basis or more frequently, the Foundation will submit to the University's Advancement Services office a listing of all gifts received on the tenth day of the following month. The listing will include the names and addresses of donors, together with the amounts given, the purpose of the gift, and the date received.

15. AUDITS AND REPORTS. The Foundation agrees to abide by the reporting and auditing requirements as established by the System and the University concerning assets, gifts, and distributions. Reporting and auditing requirements may be changed upon written notice to the Foundation. Upon reasonable notice, all accounts and records of the Foundation will be open to inspection by the System, the University or its designee. The Foundation will submit the following to the Vice President for University Advancement:

(A). A financial statement within 120 days following the end of the Foundation's fiscal year and an audited financial statement within 30 days following the Foundation's acceptance of the audit from an independent auditor.

(B). Copies of all Internal Revenue Service (IRS) Form 990 within 30 days after its filing and, where applicable, copies of IRS Form 990T within 30 days after its filing.

(C). An annual report of the Foundation's activities and programs, including a summary overview of its revenues and expenditures.

16. FOUNDATION GOVERNANCE. The Foundation will provide the University Vice President for University Advancement the following:

(A). Bylaws at the time the University-Foundation Agreement is established and whenever amendments are made to either document.

(B). A listing of Officers and Board members, including names, addresses, and telephone numbers at the time the Agreement is established and whenever there is a change.

17. INSURANCE. Throughout the term of this Agreement the Foundation agrees to maintain insurance of the types and at the limits of coverage determined by the University and, in a form required by the University. Such policies shall be primary in their coverage and name the University, the Texas State University System, their Regents and employees as additional insureds.

18. CONFLICT OF INTEREST. Members of the Board of Regents, or other officers or employees of The Texas State University System or component institution may serve in similar management or decision making positions for the Foundation provided the service is approved by the Board of Regents. Such individuals cannot receive salary or any benefit whatsoever from the Foundation unless the receipt of such salary and benefit is approved by the Board of Regents.

19. **AUTHORITY TO BIND.** Without the prior written consent of the Foundation, no officer, or employee of the University shall commit the Foundation to any agreement or expenditure or accept any gift, contribution, grant or bequest on behalf of the Foundation. Without the prior written consent of the University, the Foundation shall not commit the University to any agreement or expenditure or conduct any fund-raising activities or functions on behalf of the University.

20. **GOVERNING LAW AND VENUE.** This Agreement shall be construed, interpreted, and the rights and duties of the parties determined in accordance with the laws of the State of Texas. Venue shall lie in Travis County, Texas.

21. **WAIVER.** A waiver by either party of any of the terms and conditions of this Agreement in any instance shall not be deemed or construed to be a waiver of such term or condition for the future, or any subsequent breach thereof, or any other term and condition of this Agreement.

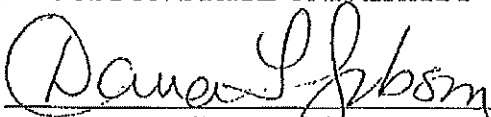
22. **SOLE AGREEMENT.** This Agreement constitutes the sole agreement between the parties respecting the administrative relationship between the Foundation and the University and supersedes any other written or oral agreement. This Agreement may be amended only by an instrument in writing specifically referring to this Agreement and executed by duly authorized representatives of both parties.

23. **SEVERABILITY.** If any provision of this Agreement shall, for any reason, be held violative of any applicable law, and so much of said Agreement is held to be unenforceable, then the invalidity of such specific provision herein shall not be held to invalidate any other provision herein which shall remain in full force and effect.

24. **BOARD APPROVAL.** Both parties acknowledge that this Agreement is subject to the approval of the University and the Foundation's Board of Trustees and shall be null and void if approval is not received.

SIGNED:

SAM HOUSTON STATE UNIVERSITY

BY:  DATE: 6-27-12
Dana L. Gibson, President

SAM HOUSTON UNIVERSITY FOUNDATION, INC.

BY:  DATE: 6-27-12
Robert [unclear], President

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APPENDIX A – SERVICES

The Foundation will provide the following services and programs that benefit Sam Houston State University and its fund-raising programs.

- a. Support of Private Giving: The Foundation will create an environment conducive to increasing levels of private giving in support of the University's mission and fund-raising priorities.
- b. Coordination of Fund Raising: The Foundation will not compete but coordinate with the University on fund-raising programs to ensure efficient, well-planned activities to raise significant private support and to avoid conflicts that the University President determines might confuse donors.
- c. Gift Management and Acceptance Policies: The Foundation will establish and adhere to and periodically assess its gift management and acceptance policies. It will promptly acknowledge and issue receipts for all gifts to the Foundation. In the absence of policies governing a particular gift, the Foundation will follow the University's procedures.
- d. Donor Confidentiality: The Foundation will establish and enforce policies to protect donor confidentiality and rights to the extent permitted by Texas law.
- e. State and Federal Grants: The Foundation may accept grants from state and federal agencies only in special circumstances that are approved by the University President and the Foundation Trustees.
- f. Asset Management: The Foundation will establish asset allocation, disbursement, and spending policies that adhere to applicable federal and state laws, including the Uniform Prudent Investor Act (UPIA) and the Uniform Prudent Management of Institutional Funds Act (UPMIF).
- g. Types of Contributions: The Foundation will receive, hold, manage, invest, and disburse contributions of cash, securities, patents, copyrights, and other forms of property.
- h. Distribution of Gifts to University: The Foundation will disburse gift funds to the designated entity within the University in compliance with the applicable laws, University policies, and gift agreements. It will disclose any terms, conditions, or limitations imposed by the donors on the use of the gifts for which the University will comply.

i. University Support: The Foundation will support the University whenever opportunities arise that would enable the University to expand and enhance programs, including the acquisition and management of real property and personal property for the benefit of the University for future allocation, transfer, or use.

j. Database Updates: The Foundation will promote acquisition of alumni and friends database updates and related information to support the University's communications, alumni relations, fund-raising, enrollment management, and governmental affairs priorities and to provide new and revised data to the University.

k. Use of Foundation Donor List: The Foundation will make its donor list available for coordinated use by the University in the areas of fund-raising, athletics, legislative advocacy, student recruiting, and other such programs that benefit the University.

l. Communications: The Foundation will provide information for inclusion in the University's annual report to donors and magazine and for press releases.

m. Donor Recognition Programs and Fund-Raising Events: The Foundation will promote and actively participate with the University staff charged with the coordination, planning and implementation of donor recognition programs and fund-raising events.

n. Public Affairs: The Foundation shall participate in programs that enhance the visibility and stature of the University and its alumni, donors and students, including legislative advocacy.

o. Foundation-University Relationships: The University Vice President for University Advancement and the President of the Foundation will be the primary communication linkage between the University and the Foundation for programming purposes.

p. Other Support: The Foundation is not limited or restricted to providing the support and services listed. Within its available resources, the Foundation will provide other assistance as requested by the University.

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APPENDIX B – COMPENSATION

<u>Description of Services</u>	<u>Projected SHUF Annual Expenses</u>	
Fund Raising and Donor Relations		
Solicitation of major gifts	\$ 10,000	
Gift processing and receipting	5,000	
Donor relations	<u>2,500</u>	
Subtotal		\$ 17,500
Communications & Marketing		\$ 5,000
Board of Directors		
Mailings and material	\$ 2,000	
Board meetings	<u>500</u>	
Subtotal		\$ 2,500
University Support		
Services and fees paid on behalf of SHSU	\$ 75,000	
Programs and scholarships	25,000	
Public affairs	5,000	
Community service & memberships	2,500	
Legislative committees	2,500	
Alumni relations	5,000	
Foundation-University Relationships	<u>10,000</u>	
Subtotal		<u>125,000</u>
Total		<u>\$150,000</u>
Sources of Funds		
Sam Houston Foundation		\$ 30,000
Sam Houston State University Compensation		
Cash payments	\$100,000	
SHSU contracted services	15,000	
In-kind compensation	<u>5,000</u>	
Subtotal		<u>120,000</u>
Total		<u>\$150,000</u>