

AGREEMENT
Between
THE EVERGREEN STATE COLLEGE
And
THE EVERGREEN STATE COLLEGE FOUNDATION

This Agreement is entered into by and between The Evergreen State College (“College”) and The Evergreen State College Foundation, a nonprofit corporation (“Foundation”).

WHEREAS, the College, pursuant to RCW 28B.40.120(10), may receive such gifts, grants, conveyances, devises and bequests of real and personal property from whatsoever sources, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out College programs; and

WHEREAS, the College has, from this express power to receive property, the implied power to solicit the same; and

WHEREAS, the College, has the authority to enter into contracts for these and other lawful purposes; and

WHEREAS, the Foundation, as a tax exempt organization must be organized and operated exclusively to receive and administer property and to make expenditures to or for the benefit of the College; and

WHEREAS, the Foundation is empowered to solicit and receive property and to make contributions, grants, gifts and transfers of property to the College and/or Foundation; and

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

The Foundation is organized in order to operate exclusively for the purposes of promoting, supporting, maintaining, developing, increasing and extending educational offerings and the pursuit thereof at or in connection with The Evergreen State College; and, in the furtherance of the foregoing, to conduct any and all scientific, literary, charitable and educational activities permitted both to an organization exempt under Section 501(c)(3) of the Internal Revenue Code, or acts amendatory thereof or supplementary thereto, and by chapter 24.03 RCW, as now or hereafter amended.

The phrase “educational offerings” as used in this article shall be construed to mean and include all activities designed to facilitate and/or enhance the cultural, educational, living and operational conditions at The Evergreen State College; establish, acquire, maintain, enlarge and expand the curriculums, services, faculty, staff and the real or personal properties of The Evergreen State College; and provide financial or other assistance to the students, faculty and staff of The Evergreen State College in their efforts to acquire an education.

The primary objective and purpose of the foundation is to create and found a charitable, educational, not-for-profit foundation for the sole benefit of The

Evergreen State College, Olympia, Washington, to assist, strengthen and further in every proper and useful way the purposes, work and services of the College, and to develop, enhance and utilize the ties of interest, concern and affections existing between the College and its alumni and friends throughout the state and nation.

and

WHEREAS, the Foundation and College recognize that close collaboration and cooperation is necessary to (a) appropriately serve the educational mission and priorities of the College; and (b) to avoid competition for funds or unproductive duplication of effort;

NOW, THEREFORE, the parties hereby agree as follows:

I. SEPARATE OBLIGATIONS

A. The Foundation shall:

1. Expend its best efforts to seek to accrue gifts, grants, conveyances, devises, and bequests of money and real and personal property for the benefit of the College. For this purpose, the Foundation will design and implement programs and procedures approved by the College to solicit and receive such money and property and also to acquire such property by purchase, lease, exchange or otherwise, all to further the purposes of the educational mission of the College as defined from time to time by the College and its Board of Trustees in stated goals, objectives, and priorities;
2. Comply with all applicable federal and state laws. For this purpose, the Foundation will establish rules and procedures for the management of all affairs of the Foundation in accordance with (a) the requirements for tax-exempt entities under the federal Internal Revenue Code, including its section 501(c)(3), and (b), the laws of the state of Washington applicable to the Foundation, including but not limited to: the Charitable Trusts Act (RCW 19.09), the Uniform Management of Institutional Funds Act (RCW 24.44), the Washington Nonprofit Corporations Act (RCW 24.03), and the Charitable Solicitations Act (RCW 11.110);
3. Tender to the College immediately all gifts and donations it may receive wherein the College is designated as recipient, and properly account and be responsible for all donations which designate the Foundation as recipient;
4. Accept, hold, administer, invest and disburse such funds and properties of any kind or character as from time to time may be given to it, in accordance with the terms of such gift, provided, however, that any restricted gift which in any way obligates the College shall not be accepted by the Foundation without the prior written consent of the College President or the Vice President for Advancement;
5. Make contributions, grants, gifts, and transfers of property, both real and personal, either outright or in trust, to or for the benefit of the College;
6. Use all assets and earnings of the Foundation for the benefit of the College or for payment of necessary and reasonable expenses of the Foundation. No part of such assets and earnings shall accrue to the benefit of any director, officer, member or

employee of the Foundation or of any other individual, except for appropriate payment of reasonable compensation for services actually rendered or reimbursement of reasonable expenses necessarily incurred;

7. Not merge, consolidate, or change the Foundation's Articles of Incorporation without the written consent of the College which consent shall not be unreasonably withheld;
8. Abide by donor intent for donations as provided by gift agreements;
9. Foundation staff shall act in cooperation with the College faculty and staff and conduct themselves in accordance with the College's operational policies and procedures, recognizing the supporting role of the Foundation to the College and the College's rights and obligations in setting appropriate directions for the College.

B. The College shall:

1. Provide the Foundation with office space, including utilities, use of office furniture, file cabinets, telephones, and associated equipment, warehouse space for temporary storage of donated materials and equipment as well as office files. Items included, but not limited to, are fax machines, copy machines, computers, and printers. The value for the use of such space and equipment shall be deemed to be a partial payment by the College for the Foundation's services as described in this Agreement;
2. Provide the Foundation with use of office machines, materials and services as reasonably required for its operation. Items included, but not limited to, are consumable office supplies, telephone service, postage, computers, printers, fax machines, copy machines, photocopying, any printing and design services, facsimile transmission, duplication, publications, travel and per diem associated with fund raising; Annual Fund programmatic expenses (e.g., printing, postage, telephones, electronic telemarketing systems including maintenance and license fees, telephone service, students), food and meals that would otherwise fit within the light meal and refreshment policy for business meetings (e.g., board meetings, retreats), audio-visual equipment and services, and part-time professional and/or staff services including contracted personal services, all as partial payment for the Foundation's services to the College as described in this Agreement. The time allocated to services to the Foundation shall not be full-time for any College employee;
3. Abide by donor intent for donations as provided by gift agreements.

II. ACCOUNTING AND AUDITING

To provide proper accounting and auditing for the property and services provided by each party under Article I:

- A. The College business office, as partial payment for the Foundation's services to the College, shall perform accounting and fiscal functions as may be necessary to carry out Foundation activities.

- B. By May 15 before each fiscal year (July 1 through June 30), the College business office shall prepare an assessment of anticipated transactions and services under this Agreement for that upcoming year, including all space and equipment, supplies, personnel, and other services the College expects to provide to the Foundation. The executive director of the Foundation and the president of the College, and/or their designees, will review and approve that assessment.
- C. The value of all space and equipment, supplies, personnel, and other services which the College provides to the Foundation shall constitute payment in full for Foundation services and shall not exceed the total amount of \$3,000,000 in any fiscal year. The College will regularly keep track of the space and equipment, supplies, personnel, and other services it is providing to assure that this maximum amount is not being exceeded. The College business office will annually prepare, and the executive director of the Foundation and the president of the College and/or their designees will annually review a post-closing summary of the transactions between the two parties to assure that this maximum has not been exceeded.
- D. The Foundation shall annually confirm to the College (1) that it has fully complied with its obligation to expend its best efforts to seek to accrue gifts, grants, donations and endowments for the benefit of the College and (2) that it has used all assets and earnings of the Foundation for the exclusive benefit of the College or the payment of necessary and reasonable administrative expenses of the Foundation. For this purpose, the Foundation will list its accomplishments for the preceding year and share with the College its revenue and expense statements for the preceding year and its end-of-year balance sheet. This shall be presented to the College in the Foundation's annual report.
- E. The Foundation is a separate entity from the College, and shall be annually audited by a reputable independent accounting firm and provide the College with a copy of the annual audited financial statements, including management letters. The Foundation's Treasurer and the College's Vice President for Finance and Administration, and/or their designees, shall fully cooperate with the independent accounting firm in providing necessary financial documents.
- F. The College is a state institution of higher education, and shall be audited by the State Auditor's Office.
- G. The Foundation shall permit the president of the College, or the president's designee, to inspect and/or copy all Foundation books, accounts and records at all reasonable times in order to determine compliance with the commitments made in this Agreement. The president's designee may include institutional or state auditors. Nothing herein shall be deemed to affect the rights and responsibilities of the State Auditor.

III. OTHER AGREEMENTS

- A. Independent Capacity: At all times and for all purposes of this Agreement, each party shall act in an independent capacity and not as an agent or representative of the other party.
- B. No Indemnification: Each party shall be responsible for the actions and inactions of itself and its own officers, employees, and agents acting within the scope of their authority.

- C. No Assignment: This Agreement is not assignable by either party, in whole or in part.
- D. Governing Law and Disputes: The laws of the State of Washington shall govern this agreement. Before instituting any legal action hereunder, a party, through its chief executive officer, shall meet with the chief executive officer of the other party and attempt in good faith to resolve the disagreement. Venue of any action hereunder shall be in Thurston County Superior Court.
- E. Entire Agreement: This constitutes the entire Agreement of the parties, including all oral understandings, on the subject of their general and overall relationship. However, the parties may enter into other stand-alone agreements on specific subjects. All such agreements shall be in writing and signed by the parties and approved as to form by the Attorney General or designee.
- F. Modification: No alteration or modification of any term of this Agreement shall be valid unless made in writing, signed by the parties and approved as to form by the Attorney General or designee.
- G. Termination: This Agreement may be terminated by either party only at the end of a State fiscal biennium, upon written notice to the other party given at least ninety (90) days in advance. However, this Agreement or a successor overall agreement with the College shall be necessary for the Foundation to operate.
- H. Expiration: This Agreement shall expire on June 30, 2011.

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of the parties on this 14 day of May, 2008.

THE EVERGREEN STATE COLLEGE
FOUNDATION

By

Janis Mercker, Chair
The Evergreen State College Foundation

THE EVERGREEN STATE COLLEGE

By

Karen E. Lane, Chair
The Evergreen State College Board of
Trustees