

**MEMORANDUM OF UNDERSTANDING/AGREEMENT  
BETWEEN THE TEXAS STATE UNIVERSITY SYSTEM AND  
THE TEXAS STATE UNIVERSITY – SAN MARCOS DEVELOPMENT FOUNDATION**

**WHEREAS**, the Texas Legislature, which is given the duty and authority to provide for the maintenance, support, and direction of The Texas State University System, has, in Section 95.21 of the Texas Education Code, delegated to its Board of Regents the power and authority, in broad terms, to administer such System and, further, given the Board authority to promulgate and enforce such rules, regulations, and orders for the operation, control, and management of the component system as such Board may deem necessary or desirable, including the power to adopt a rule, regulation, or order delegating such power to any officer, employee, or committee as the Board shall designate; and

**WHEREAS**, in fulfilling its duties and exercising its power and authority, The Texas State University System has adopted Rules and Regulations, a copy of which is attached as Exhibit 1, and Chapter IX of such Rules and Regulations specifically address “Private Support Organizations;” and

**WHEREAS, THE TEXAS STATE UNIVERSITY – SAN MARCOS DEVELOPMENT FOUNDATION** (previously The Southwest Texas State University Development Foundation and hereafter referred to as the “Development Foundation”) is a “Private Support Organization” as described in The Texas State University System’s Rules and Regulations and the Development Foundation’s sole purpose is to benefit The Texas State University System, specifically The Texas State University – San Marcos (previously Southwest State Texas University and hereafter referred to as the “University”), its teaching, research, and other components; and

**WHEREAS**, the Development Foundation was incorporated on November 9, 1977 at the request of the then President of the University, being Dr. Lee H. Smith, in order to support the University, specifically by raising funds from the private sector (from individuals, corporations, and foundations) for the sole benefit of the University (and not for other universities within the System); preserving for the sole benefit of the University such privately raised funds and keeping them separate from the public funds of the University; investing, separately from public funds allocated to the University and funds donated by the private sector to the University, such privately raised funds for the sole benefit of the University; and making distributions for the sole benefit of the University in accordance with the donors' wishes; and

**WHEREAS**, the Development Foundation has been recognized by the Internal Revenue Service as being a publicly supported organization by virtue of supporting the University, and a copy of the IRS Determination Letter dated October 24, 1978 is attached as Exhibit 2; and

**WHEREAS**, the System's Rules and Regulations provide that the Board of Regents may by written contract provide a Private Support Organization with office space, telephone service, utilities, and the use of other component equipment and facilities and, further, that the Board may authorize officers and employees as part of their regular duties to perform administrative tasks for the Private Support Organization, and, further, that the Board may authorize officers or employees whose duties routinely include the solicitation of funds on behalf of a System component to solicit funds on behalf of a Private Support Organization if such practice is approved by the Board and made the subject of a written contract, and, further, the Board may authorize officers and employees who do not routinely solicit funds on behalf of a component to, as part of their regular duties, solicit funds for the Private Support Organization; and

**WHEREAS**, the Board has delegated to the University responsibility for development and solicitation of funds, including for an annual giving campaign and long-term and short-term endowments, and the University has currently assigned various of its

staff to aid in development efforts for various academic disciplines, and staff support for them, and the Board anticipates that, in the future, the University will continue to assign responsibilities to various employees regarding Development Foundation efforts; and

**WHEREAS**, the Board of Regents and the Development Foundation have been acting under Memorandum of Understanding dated November 16, 1984, and wish to enter into a revised Memorandum of Understanding to reflect the change in name of both the University and the Development Foundation and to memorialize that the support by the Foundation provides great consideration to the public and serves a public purpose, that the Board of Regents has delegated to the University responsibility for assigning staff to development and fund-raising efforts, that the Development Foundation will provide the Board of Regents with an annual report of its activities, including its assets, by first providing such report to the President of the University who, in turn, will provide it to the Board, that the Board of Regents, by virtue of its ability to approve the Articles of Incorporation of the Development Foundation and its Bylaws, and any revisions thereto, maintains sufficient control over the Development Foundation so as to assure that privately raised funds, as well as any public resources, are used for the University's charitable and educational mission, and that the Board of Regents does hereby approve the revised Articles of Incorporation/Constitution and Bylaws of the Development Foundation, attached hereto as Exhibits 3 and 4; the revised Articles of Incorporation have been adopted by the Development Foundation's Trustees and filed with the Texas Secretary of State and the Bylaws have been approved by the Trustees and will be formally adopted after the Board of Regents approves them;

**NOW, THEREFORE, THE PARTIES ENTER INTO THIS MEMORANDUM OF UNDERSTANDING:**

### **I. DEVELOPMENT FOUNDATION'S DUTIES AND OBLIGATIONS**

1.01 Support of the University. During the term of this Memorandum of Understanding/Agreement, the Development Foundation will support the University and its shall, specifically:

- (a) Continue to invest and administer funds for the University's benefit;
- (b) Continue to conduct development efforts for the benefit of the University, utilizing the expertise of those employees of the University who are assigned to work with the Development Foundation and the resources of the Development Foundation for that purpose;
- (c) Continue to work with other groups which express an interest in assisting the University in pursuit of fund-raising efforts;
- (d) Continue to render the same assistance to the University as it has rendered in the past and such additional assistance as may, in the future, appear mutually desirable, with changes that take place from time to time as agreed upon by the University and the Development Foundation; provided, however, that the Development Foundation's primary focus in the future will be on developing and maintaining long-term and short-term endowment monies; and
- (e) Continue to recognize the University as the sole beneficiary of its development policies and its educational support.

1.02 Annual Report to President of University and The Board of Regents. The Development Foundation will submit an annual report to the President of the University each year. The President of the University will then submit the report to the Board of Regents.

1.03 Responding to Audit Requests. The Board of Regents and/or the University may, from time to time, audit the books and records of the Development Foundation.

1.04 No Salaries or Benefits to University Employees or to Trustees of the Development Foundation. In accordance with the System's Rules and Regulations, any member of the Board of Regents, any officer and any employee of the System or of any component of the System who serves in a management or decision-making position with the Development Fund or who renders services of any kind whatsoever to the Development Fund, shall receive no salary or benefit for such service unless the receipt of such salary or benefit has been approved by the Board of Regents. However, reimbursement by the Development Foundation of actual travel, lodging, and other expenses incurred by an individual while rendering such service does not require approval by the Board of Regents.

1.05 Development Foundation to Submit Revisions to Articles of Incorporation/Constitution and Bylaws to Board of Regents for Approval. The Board of Trustees of the Development Foundation may, from time to time, make revisions to the Articles of Incorporation/Constitution and Bylaws. The Development Foundation will submit proposed revisions to the Board of Regents prior to adoption unless the Development Foundation's Board believes it is not possible to do so given the timing (for example, the Development Foundation filed amended Articles of Incorporation changing its name prior to submitting such proposed revisions to the Board of Regents, because the name change of the University became effective September 1, 2003.) If such revisions are not able to be submitted to the Board of Regents for approval prior to becoming effective, the Development Foundation will submit them within 30 days of their effective date and will thereafter make any changes to them as directed by the Board of Regents before the Board of Regents will approve them.

## II. THE TEXAS STATE UNIVERSITY'S DUTIES AND OBLIGATIONS

2.01 Support by University Staff. The Board of Regents hereby delegates to the University responsibility for assigning employees of the University to aid in the mission of the Development Foundation, including, but not limited to fund-raising efforts on behalf of the University and the Development Foundation; receiving, receipting, acknowledging, reporting, and administering donations; and investing those donations. It is contemplated that such employees may include without limitation a University Administrator and Development Officers from various academic disciplines, and support staff for them. Assignments of duties with respect to the Development Foundation shall comply with the System's Rules and Regulations and the University is specifically authorized to assign duties as part of any employee and officer's regular duties and to assign fund-raising duties specifically to employees and officers whose duties routinely include the solicitation of funds on behalf of the University or any component of it and also employees and officer whose duties do not routinely include the solicitation of funds.

2.02 Facilities and Equipment Support. The Board of Regents agrees that the University will provide to the Development Foundation office space, telephone service, utilities, and the use of other equipment and facilities as determined by the University.

### III. FINDINGS OF PUBLIC SERVICE

Memorandum of Understanding/Agreement Provides Adequate Consideration to the Public, Serves a Public Service, and It Along with Governing Documents of the Development Foundation Enables the Board of Regents to Maintain Sufficient Control Over any Public Resources Provided by the Contract to Ensure the Public Purpose Therein is Met. The Development Foundation has been created and exists for the sole purpose of benefiting the University. Its existence not only complements, but enhances, the ability of the Board of Regents to provide funding for the University in carrying out its educational mission. Thus, this Memorandum of Understanding/Agreement between the Development Foundation (which is governed by a volunteer, non-paid Board of Trustees and which has no employees of its own) and the University provides adequate consideration to the public of the State of Texas and serves a public service by enhancing the ability of the University to solicit, manage, and disburse funds. The public resources provided by this Memorandum of Understanding/Agreement are not direct infusions of monies; instead, they are the payment by the University of facilities overhead and salaries of University employees who are assigned to the Development Foundation. The existence of the Development Foundation carries out part of the charitable and educational mission of the University and enhances the University's ability to raise, manage, and disburse privately-solicited funds for the University's mission. The Board of Regents is, as part of this Memorandum of Understanding/Agreement, approving the Development Foundation's Articles of Incorporation/constitution and Bylaws and maintaining the power to approve any changes to them in the future and also to terminate this Memorandum of Understanding/Agreement upon 30 days written notice. The Board of Regents through the University maintains complete control over the assignment of employees and officers to work with the Development Foundation and the Development Foundation has no employees of its own, only a volunteer Board of Trustees. All of these

enable the Board of Regents to maintain sufficient control over any public resources provided under the Memorandum of Understanding/Agreement so as to ensure that the public purpose set forth herein is met and that the resources of the Development Foundation are devoted to the University.

**IV. TERM OF MEMORANDUM OF UNDERSTANDING/AGREEMENT; GOVERNING LAW**

4.01 Term. This Memorandum of Understanding/Agreement will commence on the last day signed by the Board of Regents of The Texas State University System and the Board of Trustees of The Texas State University – San Marcos Development Foundation. It shall continue in effect until terminated by either party upon 30 days' written notice to the other. Notices shall be sent to each party as indicated below, with a copy to the President of the University; provided, that a party may change the address for notifications by informing the other party of that change in writing:

Vice Chancellor & General Counsel (and Include the Name of Person at time of Notice)  
Director of Audits & Analysis (and Include the Name of Person at time of Notice)  
The Texas State University System  
Thomas J. Rusk Building  
200 East 10<sup>th</sup> Street, Suite 600  
Austin, TX 78701-2407

Chair, Board of Trustees (and Include the Name of Chair at time of Notice)  
Development Director (Name of Person at time of Notice)  
The Texas State University – San Marcos  
601 University Drive  
San Marcos, TX 78666-4685

with copy to:

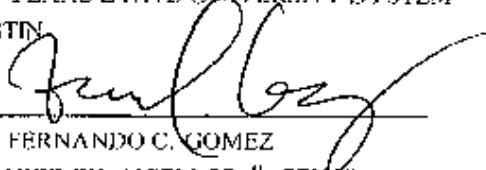
President (and Include the Name of President at time of Notice)  
The Texas State University – San Marcos  
601 University Drive  
San Marcos, TX 78666-4685

4.02 Governing Law. This Memorandum of Understanding/Agreement shall be governed by the laws of the State of Texas. Venue for any cause of action regarding this

Memorandum of Understanding/Agreement shall be where the principal office of the Development Foundation is located.

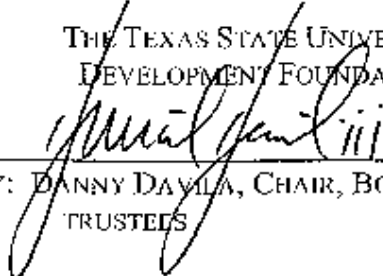
SIGNED as of the dates shown below.

THE TEXAS STATE UNIVERSITY SYSTEM  
AUSTIN

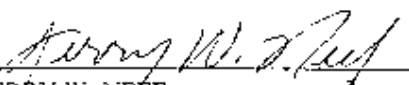
  
BY: FERNANDO C. GOMEZ  
VICE CHANCELLOR & GENERAL  
COUNSEL

Dated: Austin, Texas  
12/17, 2003

THE TEXAS STATE UNIVERSITY  
DEVELOPMENT FOUNDATION

  
BY: DANNY DAVILA, CHAIR, BOARD OF  
TRUSTEES

Dated: San Marcos, Texas  
12/17, 2003

  
BY: JERRY W. NIEF  
DIRECTOR OF AUDITS & ANALYSIS  
DATED: AUSTIN, TEXAS

12/17, 2003

EXAMINED, APPROVED, AND RECOMMENDED:

THE TEXAS STATE UNIVERSITY - SAN MARCOS

  
BY: DENISE M. TRAUTH, PRESIDENT