MEMORANDUM OF AGREEMENT
BETWEEN
CALIFORNIA STATE UNIVERSITY, EAST BAY
AND
CAL STATE EAST BAY EDUCATIONAL FOUNDATION, INC.

This Memorandum of Agreement is made this 2nd day of December, 2009, between California State University, East Bay (hereinafter, "CSUEB") and the Cal State East Bay Educational Foundation, Inc. (hereinafter, "the Foundation").

RECITALS
WHEREAS, CSUEB formally recognizes the Foundation as a separate corporate entity established for the sole purpose of soliciting, managing, and distributing private gifts, grants, conveyances, devises, bequests, or otherwise (hereinafter, "private gifts and donations") given for the benefit of CSUEB; and,

WHEREAS, CSUEB further recognizes that the Foundation provides the following services: 1) creates an opportunity for and encourages private individuals and organizations to invest in the support of University programs and services with the assurance that the benefits of these gifts and donations supplement state appropriations to CSUEB; 2) provides added assurance to donors that their contributions will be distributed and utilized for the specified purposes; and 3) provides a medium for alumni and community leaders to participate in and contribute to the strengthening of CSUEB through their participation in the solicitation, management and distribution of private gifts and donations; and,

WHEREAS, it is understood by CSUEB and the Foundation that all gifts and donations received by the Foundation are given for the benefit of CSUEB; and, therefore, shall be managed, distributed, and utilized in accordance with policies and procedures established by CSUEB and the Foundation to assure accountability to the donor and to the public that supports CSUEB; and,

WHEREAS, CSUEB has determined that the Foundation shall be the primary organization for developing and coordinating fund raising activities for CSUEB. NOW, THEREFORE, it is agreed as follows:

FOUNDATION AGREEMENTS

1. FOUNDATION'S ORGANIZATION AND GENERAL FUNCTION:

1.1 The Foundation agrees to operate according to its Articles of Incorporation filed March 6, 1991 and Bylaws, as amended on July 11, 1996. Any amendment to these Articles of Incorporation and Bylaws must be approved in writing by CSUEB. Furthermore, the Foundation agrees to organize and operate in such a manner that will retain the Foundation's legal status as a tax-exempt, non-profit organization pursuant to section 501(c)(3) of the Internal Revenue Code, or any successor statute.

1.2 The Foundation agrees to provide solicitation, consultation, and other related services in efforts to maximize private gifts and donations from various sources to CSUEB or to the Foundation for the benefit of CSUEB. To that end, the Foundation shall plan,
direct, coordinate, and conduct activities for raising funds from private sources, including:

1.1.1 An annual giving program
1.1.2 Capital campaigns
1.1.3 Deferred and major giving
1.1.4 Special project campaigns

1.3 It is understood that the activities of the Foundation are to be conducted for the benefit of CSUEB and must be consistent with CSUEB’s plans, programs and policies. It is, therefore, agreed that the Foundation shall not solicit or accept private gifts and donations from any source for a use specified by the donor that are inconsistent with CSUEB’s goals and policies.

1.4 The Foundation will maintain policies and procedures for the review and acceptance of gifts and donations. The acceptance of any gift or donation that requires a matching obligation of CSUEB or creates a future obligation of University resources must first be approved by CSUEB.

1.5 The Foundation will not engage in any instructional, research, or public service activity, without the prior approval of the President of CSUEB.

2. MANAGEMENT OF GIFTS AND DONATIONS:

2.1 The Foundation agrees to provide investment management oversight of any endowments currently held or received in the future in the name of CSUEB or the Foundation. The Foundation also agrees to be the custodian and manager of any endowments received by any other affiliated 501c(3) organization. The Foundation shall separately account for the funds of such endowments, and may co-invest such endowments with the objective of maximizing investment return and minimizing investment management costs and risks.

2.2 The Foundation may retain such professional services as it deems appropriate for the management and investment performance of the endowments.

2.3 The Foundation agrees, in consultation with CSUEB, to establish a schedule for transferring funds received by the Foundation to CSUEB.

2.4 The Foundation through the oversight of its Finance Committee and subject to Board approval may retain any short-term investment income earned on funds on deposit in account(s) other than endowment income in order to offset reasonable operating expenses. The Foundation agrees to provide CSUEB an annual operating budget for further oversight.

2.5 The Foundation may directly disburse funds maintained by the Foundation for those expenses incurred directly by the Foundation, such as, but not limited to, payments to beneficiaries and others pursuant to the terms of life estate gifts, management cost for real estate, premium payments of life insurance gifts, transfers of income or assets to the University. The Foundation is expected to follow good business procedures in the
disbursement of funds and the procurement of services. The Foundation Board shall establish policies for the oversight and authorization of all disbursements of funds directly by the Foundation.

3. REPORTS AND ACCOUNTING:

3.1 The Foundation shall provide CSUEB within three months of the close of the fiscal year an annual report that will include a summary of all gifts and donations received, held, and/or distributed during the past year, the performance of the investment management program, and the Foundation's operating income and expenses for the fiscal year.

3.2 The Foundation shall provide CSUEB with the report of an annual audit performed by an independent certified public accounting firm selected by the Foundation and following generally accepted accounting principles.

3.3 The Foundation shall at all times maintain adequate insurance coverage for all property held and managed by the Foundation for CSUEB, and maintain appropriate liability insurance for its officers and directors by separately acquired coverage.

3.4 The Foundation shall account for CSUEB activity related to Current Use funds within the Foundation's accounting records for ease of day to day accounting, reporting and CSUEB departmental use. However, CSUEB will retain liability for all contracts and financial activity resulting from the use of Current Use funds. Additionally, this activity will be disclosed in the audited financial statements of CSUEB and not those of the Foundation.

UNIVERSITY AGREEMENTS

In recognition of the philanthropic and investment services provided by the Foundation, CSUEB agrees to provide the following to the Foundation in support of its responsibilities.

4. CSUEB'S PRIORITIES AND LONG RANGE OBJECTIVES

4.1 CSUEB acknowledges that the Foundation needs to know CSUEB's long-range goals, and academic objectives in order to match the fund-raising activities with priority needs. CSUEB, therefore, agrees to provide such information and to involve the Foundation as CSUEB continues to develop planning goals.

4.2 CSUEB agrees to involve the Foundation in determining the appropriate staff support required by the Foundation to fulfill its role and responsibilities through CSUEB's Advancement Office. The staffing level, recruitment and hiring, compensation, and other personnel matters will be approved by the President and in compliance with general University personnel management policies.

4.3 CSUEB agrees that the Foundation may contract with persons and entities on a temporary consulting basis as it deems necessary to fulfill its role and responsibilities.
4.4 CSUEB agrees to involve the Foundation in the selection and evaluation of the Vice President of University Advancement.

4.5 CSUEB agrees to provide the Foundation with certain services for which no separate charges will be assessed. Such services may include, but not be limited to, business, financial, legal, public relations, and consulting services.

4.6 CSUEB agrees to establish and maintain a record of all gifts and donations and will provide the Foundation with appropriate access to and use of this data to do its work.

4.7 CSUEB shall cooperate with the Foundation in the development of its fund-raising programs and campaigns, including providing information, data, plans, speakers, facilities for meetings on the CSUEB campus and such other materials and services as may reasonably be necessary for the successful conduct of fund-raising programs and campaigns. CSUEB, as it deems appropriate and as resources are available, may provide financial support for major fund-raising campaigns.

5. TERMINATION:

5.1 This agreement may be terminated by either party effective upon written notice to the other party at least six months in advance thereof. If for any reason this agreement is terminated or the Foundation is dissolved or liquidated, all assets of the Foundation shall be transferred to CSUEB or a successor organization(s) designated by the President of CSUEB on or before the date of termination. In such event, the CSUEB or other successor organization shall honor to the maximum extent possible the instructions of donors to the Foundation.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed.

Cal State East Bay Educational Foundation                  California State University, East Bay

By  
Chairman

By  
President

By  
Secretary

This Agreement was approved at a regularly called meeting of the Board of Trustees of the Cal State East Bay Educational Foundation held on December 2, 2009 by unanimous vote.

Attest:  
President

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