AFFILIATION AGREEMENT
BETWEEN
Texas A&M University-San Antonio
AND
Texas A&M San Antonio Foundation, Inc.

This Affiliation Agreement ("Agreement") is made and entered into effective the 14th day of June, 2012 by and between Texas A&M University-San Antonio (hereinafter referred to as the "University"), an institution of higher education, a member of The Texas A&M University System, and an agency of the State of Texas (referred to hereinafter as the "System"), and The Texas A&M San Antonio Foundation, Inc., a nonprofit corporation duly organized under the laws of the State of Texas (hereinafter referred to as the "Foundation").

WITNESSETH

WHEREAS, the Foundation is able to solicit, receive, allocate, and recognize gifts which support the programs of the University in accordance with the mission statement and the goals specified in the strategic plan of the University and the University President’s priorities;

WHEREAS, Texas Government Code § 2255.001 requires a state agency for which a private organization exists, that is designed to further the purposes and duties of the agency, to adopt rules governing the relationship between the organization and the agency. The rules adopted shall govern all aspects of conduct of the agency and its employees in the relationship, including: (1) administration and investment of funds received by the organization for the benefit of the agency; (2) use of an employee or property of the agency by the organization; (3) service by an officer or employee of the agency as an officer or director of the organization; and (4) monetary enrichment of an officer or employee of the agency by the organization;

WHEREAS, in accordance with Texas Government Code § 2255.001, the System implemented its Regulation 60.01.01, which addresses the requirements of the statute. Further, this regulation requires that an affiliation agreement be executed with each affiliated fund raising organization;

WHEREAS, the Foundation, in connection with its fund-solicitation and asset allocation activities, engages the volunteer services of its Board of Directors, Senior Advisory Board members and other volunteer friends of the Foundation for planning, cultivating, and solicitation of private contributions, as well as increasing philanthropic support to the University;

WHEREAS, it is in the best interest of the University and the Foundation for such activities to be coordinated to increase efficiency, increase the amount of total charitable
dollars and value contributed and to expand the total number of donors supporting the University; and,

WHEREAS, the University desires that the Foundation engage in fund raising cultivation, solicitation, designation and allocation of general gift income, and overall administrative accountability of contributions collected that benefit the University, in accordance with the terms and conditions more fully set forth below;

NOW, THEREFORE, in consideration of the premises, mutual covenants, and agreements contained herein, the parties hereto agree as follows:

1. The Foundation: During the term of this Agreement, the Foundation shall conduct private fund-solicitation and other programs ("Programs"), as approved by the Foundation Board of Directors, for the purpose of raising financial support from the general public for the benefit of the University. Such Programs on behalf of the University may be specifically requested by the University; however, the Foundation reserves the right to solicit, broadly allocate and recognize gifts received on its own behalf which have been approved by the Foundation’s Directors in coordination with the University President. The Foundation will coordinate the Programs, means and methods of conducting approved fund raising activities with the University. The Foundation shall fulfill agreed upon responsibilities including, but not be limited to, the following:

1.1 Acknowledge responsibility for overall administrative accountability of contributed funds received and expenses authorized by the Foundation.

1.2 Exercise fiduciary responsibility for the operational activities of the Foundation.

1.3 Designate Texas A&M University-San Antonio as its fiscal agent to establish policies and carry out actions in support of the stewardship, fiduciary, reporting and verification functions of the Board. All funds of the Foundation must be placed into and invested through University-controlled restricted or agency accounts administered by the University Vice President of Finance and Administration.

1.4 Assume responsibility for verifying the use of funds in accordance with Donor specifications and communicating the same with Donor as a responsible stewardship activity.

1.5. Assist the University President and appropriate offices of the University in preparing materials necessary to carry out and administer Programs requested by the University which have been approved by the Foundation Directors. The Foundation may use the University’s name and identifying trademarks in order to fulfill the purposes of this Agreement, but only with event-specific, written, prior authorization from the University President.
1.6 Accept full accountability for the expenditure and allocation of Foundation funds. All disbursements and allocations are subject to donor-specified restrictions that are deemed lawful by the State and acceptable to the University President.

1.7 Perform other duties which the University may reasonably request to effectively conduct approved Programs.

1.8 Conduct activities consistent with and supportive of the total efforts of the University. The Foundation agrees to reimburse reasonable Program expenses incurred by University employees, when the assistance of these University employees is requested by the Foundation’s event/project lead volunteer(s). The Foundation shall not pay any salary and/or associated benefits directly to a University employee. The Foundation may agree through formal Board resolution for a time certain or on a year-to-year basis to pay for part of a University employee’s salary and/or benefits in exchange for execution of documented scope of work deliverables related to Foundation administration or Programs that routinely require access to University premises, information, or other resources.

1.9 Provide the President of the University annual reports at the end of each University fiscal year (i.e., during September) that account for the philanthropic revenues and operational expenses of the Foundation in executing Programs on behalf of the University. Such reports shall include a listing of each and aggregate gifts received, funds allocated by the Foundation for the benefit of the University and other financial information necessary for the University to prepare the annual IRS Form 990 and other required submissions to System, State or the federal government. The Foundation shall also contemporaneously report to the University any reimbursements made directly to a University employee.

1.10 Provide the University a copy of its annual financial statements and audit issued by a professional accountant contracted or arranged and paid by the Foundation from its own resources within thirty (30) days of its completion. The University President may require in writing that the annual financial statements be audited by an independent certified public accountant. Ultimately, the Foundation is responsible for the development, filing and maintenance of its own fiscal reports, accounting, federal filings, etc.

1.11 Provide an annual allocation from Foundation fundraising general receipts of no less than 4% of the unrestricted gifts received during the preceding twelve months, transferrable by Board resolution at the Annual Corporation Meeting. The President of the University shall have sole authority to expend and/or allocate these transferred funds for the advancement of the University and may not delegate this responsibility.

1.12 Promote excellence at the University by fostering productive relationships with program officers at private philanthropic foundations, corporate giving committee
members, individual philanthropists, other key influencers, university alumni, former students, and other friends of the Foundation and University.

1.13 Conduct local, regional, and national University fundraising events and activities.

1.14 Assist the University President in achieving her fundraising objectives through philanthropic gifts from the public and friends of the Foundation and University.

1.15 Agree to be subject to audit by the System Internal Audit Department, in addition to state and federal audits required by state or federal law or governmental regulation. The Foundation shall be responsible for any audits, reports, status updates or inspections required by its 501(C)3 status.

2. The University: The University will be responsible for the management of dollars, property and other conveyances of value from the Foundation. All Foundation funds will be maintained in, and documented and disbursed through, separate restricted accounts within the agency fund group of the Texas A&M University-San Antonio accounting system. All Foundation funds and gifted property, regardless of value or source, will be accounted for by the University in accordance with System regulations. All accounting transactions will be processed through the University’s financial accounting system in accordance with State law, System regulations and University rules and procedures. Transfers (gifts) with donor restrictions from the Foundation to the University will be disbursed in accordance with donor’s specifications, as directed by the Foundation. A separate agency fund account or sub-account(s) for Foundation operational use (and for Foundation expenditures not allowed to the University because of State law limitation or restriction) will be established and maintained by the University as a high-priority quick-response account to expedite the operational and transactional requirements of the Foundation in a very timely fashion (i.e., within two work days). Expenditures directly related to the Foundation’s operations made pursuant to written policies adopted by the Foundation Board and, if approved by the Foundation Board, expenditures that cannot be made by the University because of a state law limitation or restriction may be disbursed from an agency fund account. The University Vice President of Finance and Administration, or designee-in-writing, must approve by signature any disbursement made from accounts managed by the University for the Foundation, including both restricted and agency fund accounts. Additionally, the University agrees to:

2.1 Serve as fiscal agent for the Foundation, be responsible for developing and enforcing fiscal policy with regard to Foundation funds transferred to it, process all of its accounting transactions, prepare all of its required tax returns (e.g., the annual IRS Form 990) and financial and accounting reports, and fulfill all of its external State and Federal reporting requirements. The University will assist the Foundation in depositing charitable gifts and acknowledging donors in general conformance with the University’s procedures with regard to the timeliness of issuing acknowledgement letters (taking into consideration the availability of Foundation leader signatories).
2.2 Be responsible for the management and investment of Foundation financial resources on behalf of and in the best interests of the Foundation. The University will summarize all expenses directly related to management of Foundation funds, including treasury fees incurred from holding/investing Foundation dollars, and present these for reimbursement by the Foundation to the University at the Foundation Annual Corporation Meeting. Concurrently, the University will report on interest earned based upon investing Foundation funds. The Foundation Board will authorize the reimbursement of the University for its expenses and fees at the Annual Corporation Meeting. Said reimbursement may be made directly by the Foundation and/or in part by transfer of earned interest to the University.

2.3 Provide financial summaries to the Foundation Board twice annually (once at the Foundation Annual Corporation Meeting and the other six months later). Summaries may be provided more or less frequently upon mutual agreement of the University Vice President for Finance and Administration and the Foundation Treasurer or Board of Directors.

2.4 Forward a copy of the Foundation's Annual Financial Report (AFR) prepared at the Foundation's expense by a professional accountant, and audited by an independent certified public accountant if required in writing by the University President, to the Chief Auditor and System Office of Budgets and Accounting.

2.5 Provide information regarding graduates and donors to the Foundation upon written request pursuant to the Texas Public Information Act.

2.6 Allow the Foundation to engage the services of University employees as set forth herein in exchange for consideration to the University as set forth herein. Any monetary enrichment of University employees, including ex-officio Foundation Directors that are University employees, must be through a restricted University account (not an agency fund account) in accordance with the University's procedures, and travel reimbursements must follow the University's travel guidelines unless otherwise specified herein or restricted by the account. As determined by the University Vice President for Finance and Administration, compensation-related dollars to University employees shall be forwarded to a University account to supplement or off-set salaries and associated benefits.

2.7 Abide by ex-officio appointment criteria: Ex officio service on the Foundation's Board of Directors is without Board vote and without any remuneration or personal gain. The University President shall serve as an ex-officio, non-voting member of the Foundation Board of Directors and otherwise participate fully in the activities of such Board. Additional ex-officio members of the Foundation Board of Directors may be appointed in writing, subsequent to being accepted by the Board and entered in the Minutes of a regularly scheduled Foundation Board meeting, including (but not limited to):
• The Vice President for Strategic Initiatives, Institutional Advancement and Military Affairs, Texas A&M University- San Antonio;
• The Vice President for Business and Administration, Texas A&M University- San Antonio;
• The President of the Texas A&M University-San Antonio Faculty Senate, and;
• The President of the Student Government Association.

A University employee may not serve as a Foundation Director unless appointed in writing as an ex-officio member by the University President, and only as long as no conflict of interest exists between the employee's job responsibilities with the University and the employee's duties as a Foundation Director. Participation as an ex-officio Foundation Director by a University employee shall be for the purpose of providing advice and coordination for the mutual interest of the University and the Foundation, including but not limited to presenting annual development goals, institutional priorities and needs of the University and its key constituents.

In the event of a conflict of interest or potential conflict of interest, a conflicted University employee that is an ex-officio, non-voting Foundation Director will recuse himself/herself from the discussion and will not participate in the related deliberation or approval process. In the event of a continuing or perpetual conflict of interest, the University employee that is an ex-officio, non-voting Foundation Director may be removed by a majority of votes cast by the Foundation Board at any regularly scheduled meeting. Ex-officio members removed in this manner may not be re-appointed back to the Foundation Board in ex-officio status until the conflict of interest is resolved, testified to in writing, and found to be acceptable at a regularly scheduled meeting of the Foundation’s Board of Directors.

Annually at the Foundation’s Corporation Meeting, the University President shall review and add, remove or replace, in writing, University employees identified for ex officio appointments. The President shall retain the right to remove any University employee from the Foundation Board. This right cannot be delegated.

2.8 In exchange for the annual transfer allocation provided by the Foundation (Section 1.11, above), the University shall make available to the Foundation certain reasonable access, in the sole judgment of the University President, to:

• Accounting and operational services including, but not limited to:
  o Accounting, purchasing, human resources, investment and reporting services related to the administration of the financial activities of the Foundation.
  o Fixed asset accounting for Foundation property.
  o Support from the University’s donor management system (Raisers Edge or equivalent).
  o Office space, telephone number and mailing address for Foundation legal identity, limited furnishings, occasional use of equipment, meeting and assembly facilities in support of Foundation activities.
• Technology support services to include:
  o Internet access, and computer, email and network services.
  o Hardware and technical support for and access to the Foundation's donor database.
  o Web page development and delivery of contributions-collection services/information via the Internet.

• Access to other University services including but not limited to: telecommunications; graphics and media support; development-related constituent records, donor prospecting and records/documents correspondence related to donor cultivation, solicitation and stewardship; limited printing; campus mail; limited campus security support; modest copy services; etc.

• Discounted University mailing services at a mailing-by-mailing agreed-upon reimbursement rate.

2.9 Administrative. Foundation administrative operations shall be carried out by the University under the direction of the Vice President for Strategic Initiatives, Institutional Advancement and Military Affairs. Policies and procedures will be established as advised by the voluntary guidelines of the Council for Advancement and Support of Education (CASE) standards, and conforming with State law, System policies and regulations, and University rules and procedures.

2.10 Financial. Foundation financial operations shall be carried out by the University under the direction of the Vice President for Finance and Administration, according to generally accepted accounting principles, State law, System policies and regulations, and University rules and procedures.

3. Agency Relationship. The Foundation, its officers, employees, volunteers and agents, if any, are not agents nor shall they work as agents for the University.

4. Term and Continuation. Subject only to the provisions for termination hereinafter set forth, this Agreement shall remain in full force and effect for a period of Four years and at the end of that term the parties may execute a new agreement. Either party may terminate this Agreement at any time for any reason upon six months of prior written notice to the other party.

5. Notices. Any notice, request, demand, or other communication permitted or required to be given hereunder shall be in writing and shall be deemed to be duly given when personally delivered to the Chair or Vice Chair of the Foundation Board or to the President of the University, as the case may be, or when deposited in the United States mail by certified or registered mail, return receipt requested, postage prepaid, at the respective address of the Foundation and University as shown below, or to such other address as either party shall designate by written notice to the other:
6. **Assignments.** Neither this Agreement nor any interest therein may be assigned, transferred, or conveyed in whole or in part.

7. **Applicable Law.** 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.

8. **Miscellaneous Responsibilities:**

8.1 The President of the University will advise the Board of Directors of the Foundation on at least an annual basis at the Foundation's Annual Corporation Meeting, of plans for use of unrestricted funds made available to the University from the Foundation. The Foundation is entitled to receive from the University reports, schedules, and records as deemed appropriate by the University President to ensure the Foundation's Board of Directors can properly execute their legal and ministerial duties and responsibilities.

8.2 The Foundation agrees to perform fund-raising activities requested by the University which are approved by the Foundation's Board of Directors and shall not hold an exclusive right to such activities. The University expressly reserves the right to solicit, manage and recognize gifts on its own behalf. However, to avoid duplication, the University contemporaneously shall notify the Foundation of major donor (i.e., targeted appeals of $10,000 or greater) contacts, pledge commitments or other significant cultivation, solicitation, or stewardship moves with individuals, corporations, associations, government entities or partnerships, or other type donor prospects to the Foundation.

8.3 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 terms or conditions for the future, or of any other term and condition of this Agreement.

8.4 This Agreement constitutes the basic agreement between the parties regarding the services of the Foundation concerning the Programs. This Agreement may be amended only by an instrument in writing specifically referring to this Agreement, citing the impacted page(s) and paragraph(s), and executed by the Foundation Chair of the Board and the University President.
8.5 If any provision of this Agreement is found to violate any applicable law, and such provision 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. No provision of this Affiliation Agreement may conflict with or supersede any requirement of the Policies and Regulations of The Texas A&M University System, in effect at the time of signing. If a provision is found to be in conflict with future policies and regulations of the Texas A&M University System, the pertinent provision(s) of the Agreement may be negotiated by the two parties. If no agreement can be reached through negotiation, this Agreement may be rendered null and void.

8.6 The headings of the several Sections herein are inserted for convenience of reference only and not intended to be a part of or to affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

Texas A&M University-San Antonio

[Signature]
President

Texas A&M San Antonio Foundation, Inc.

[Signature]
Chairman of the Board of Directors