

SERVICE AGREEMENT
BETWEEN
IOWA STATE UNIVERSITY
AND
IOWA STATE UNIVERSITY FOUNDATION

This Agreement is made between Iowa State University ("University") and Iowa State University Foundation ("Foundation").

RECITALS

- A. University is an institution of higher education established under the laws of Iowa, Chapters 262 and 266 of the Iowa Code;
- B. Foundation is a private non-profit public benefit corporation existing under and by virtue of the laws of Iowa, Chapter 504A of the Iowa Code, for the express purpose of aiding and promoting educational and charitable purposes and lawful activities of University;
- C. Foundation is recognized by the Internal Revenue Service as having tax exempt status under Section 501(c)(3) of the U.S. Internal Revenue Code;
- D. University desires to reaffirm that the Foundation is the official fundraising organization for the University;
- E. The Foundation is capable of and prepared to engage in the solicitation and receipt (by gift, bequest, devise, purchase, lease, or otherwise) of money, securities, and all other forms of real and personal property; and the ownership, holding, management, improvement, investment, administration, transfer, and disposal thereof for the benefit of the University;
and

F. The University desires to engage the expertise of the Foundation to provide advice, coordination, and assistance in the fundraising and development area, and in the operation, accounting and fund investment management thereof, and the Foundation desires to provide such services, not as an employee or agent of the University, but as an independent contractor.

TERMS

In consideration of the mutual covenants, promises and conditions herein contained, and for good and valuable consideration, the adequacy of which is hereby acknowledged, University and Foundation agree as follows:

1.0 Relationship Between Foundation and University.

- 1.1 University agrees to encourage and maintain the independence of Foundation and, at the same time, foster the cooperative relationship between University and Foundation.
- 1.2 Foundation agrees to promote the strategic interests and initiatives of the University as approved by the Board of Regents, State of Iowa.
- 1.3 Foundation agrees that the President of the University shall continue to be a voting member of the Board of Directors of Foundation and a member of the Executive Committee.

2.0 Foundation's Obligations to Support University.

2.1 Foundation shall continue to maintain as its sole purpose providing of support to University. In accordance with Foundation's governing documents that support includes, but is not limited to:

2.1.1 Raising, receiving, investing, and administering funds for the University to use for its charitable, scientific, and educational purposes;

2.1.2 Assisting the University and the various colleges, units and departmental offices in their fundraising activities, capital campaigns and development programs with individuals, corporations, foundations, and other organizations;
and

2.1.3 As mutually agreed by the parties, performing other acts as may be deemed appropriate in carrying out the purposes of University, consistent with Foundation's mission and resources.

2.2 Foundation agrees that it shall maintain its status as a tax-exempt non-profit corporation under the Internal Revenue Code, Section 501(c)(3), and Iowa Code Chapter 504A.

2.3 Fundraising. Foundation shall provide University with comprehensive fundraising services, including:

2.3.1 *Planning.* Fundraising shall be consistent with the University's strategic plan, as interpreted and prioritized by University's President (or designee).

Foundation shall participate in establishing funding goals, programs, or campaigns proposed by University. Foundation shall make recommendations, provide advice and otherwise provide information related to fundraising.

2.3.2 *Donor Research.* Foundation shall identify individuals and other entities interested in supporting University. Foundation shall operate in a discrete and professional manner so as to ensure confidentiality of information related to such individuals and entities.

2.3.3 *Fundraising.* Foundation shall assist University and its various units in seeking support for University in accordance with priorities jointly agreed to as stated in Section 2.3.1.

2.3.4 *Gift Acceptance.* Foundation and University shall meet and adopt mutually acceptable gift acceptance guidelines. Foundation shall accept gifts in accordance with such guidelines. The guidelines shall assure that:

- a. Gifts are solicited consistent with University's mission;
- b. Gifts can be managed by Foundation in accordance with the donor's intent;
- c. Foundation discloses as soon as possible, and if reasonably possible prior to acceptance, any condition, term or limitation on Gifts which may be inconsistent with University's mission, law or state, Regental or University policy; and

d. Foundation considers risks involved with acceptance of the various kinds of non-cash gifts.

2.3.5 *Distribution of Gifts.* Funds and other gifts shall be distributed in accordance with the following guidelines:

a. Gifts which are endowed by the donor shall be invested and held in perpetuity. A portion of the earnings from these investments shall be available for disbursement. The Foundation shall establish investment policies and procedures to maintain the real (i.e., inflation adjusted) value of the gift.

b. Non-endowed gifts, excluding gifts held in trust, shall be available for disbursement under policies mutually agreeable to both parties upon receipt.

c. Gifts which are received as part of a charitable split interest trust shall be managed according to the terms of the trust agreement. Upon termination of the trust, any funds retained by the Foundation shall be available for disbursement or endowed according to the donor's instructions.

d. At the time of distribution of gifts or portions of gifts in the name of Foundation to University, Foundation shall disclose

- i) Each and every term, condition or limitation imposed by donor, or by legal determination (whether by a court or by the Iowa Attorney General) regarding the gift;
 - ii) Each and every dispute or contention regarding the gift, and the status of the dispute; and
 - iii) Known risks related to non-cash gifts, including, but not limited to, environmental hazards associated with gifts of real property or equipment.
- e. The disbursement of funds for the benefit of the University will be done under mutually agreed procedures that will follow established University authorizations and utilize University business procedures and systems. The Foundation will cooperate with the University to assure that disbursements are in compliance with University policy and procedures and state law.

2.3.6 *Records.*

- a. On a regular basis, the Foundation shall update the name, address, and telephone records of University alumni and friends as held by the Iowa State University Foundation Institutional Advancement Database.
- b. The Foundation has developed and maintains for its internal use in fulfilling its mission, and to assist in performing its services hereunder, a database system (hardware, software, and data) of contributors, prospects,

and friends of the Foundation and University, as well as alumni and some students of the University, referred to by the Foundation as the Iowa State University Foundation's Institutional Advancement Database. Excepting the information disclosed to the University pursuant to Section 2.3.6a, the Foundation's Institutional Advancement Database, as well as all other data, materials and information of the Foundation pertaining to past, current, or prospective donors is proprietary to the Foundation and constitutes its confidential information and trade secrets and is hereafter referred to, in whole or in part, as Foundation Confidential Information. Upon the University President's, or designated representatives, request, and subject to the agreements and covenants set out below, the Foundation will, from time to time, disclose Foundation Confidential Information in verbal or written form or on electronic, magnetic, or other media, about past, current or prospective donors, including identifying information, giving history, past involvement with the University, advisory board information, cultivation and solicitation strategies, travel program participation, and other information. In consideration of the disclosure of Foundation Confidential Information, the University agrees and covenants as follows:

- (i) The Foundation expends significant personnel and financial resources to compile, maintain, and update Foundation Confidential Information specifically and exclusively to assist in the fulfillment of its mission. Accordingly, the University

agrees Foundation Confidential Information, including, but not limited to, Foundation's Institutional Advancement Database (excepting only database software licensed from third-party vendors) is the sole and exclusive property of the Foundation and a trade secret of the Foundation.

(ii) The communication of Foundation Confidential Information to the University and its employees is not required by law and is totally subject to the discretion of the Foundation and would not be made by the Foundation if such data and information, upon disclosure to the University, was to thereby be determined to become property of the University and/or otherwise available for public examination. The University agrees that all Foundation Confidential Information that has been, or may be, disclosed to the University is and will remain the proprietary and confidential information of the Foundation and will be used solely for purposes authorized by the Foundation and consistent with its mission.

(iii) Preserving the confidentiality of Foundation Confidential Information is paramount to the effectiveness of the Foundation in carrying out its purposes. Public or other indiscriminate disclosure of the Foundation's Confidential Information could violate the need for discretion and confidentiality inherent in the fundraising mission of the Foundation and could irreparably damage the Foundation's

relationships with past and current contributors and negatively impact on its ability to develop new donors. Therefore, the Foundation's consent to treat any Foundation Confidential Information that may be disclosed hereunder or otherwise to the University, as a public record, is specifically denied.

(iv) The University and its employees shall consider all Foundation Confidential Information as "confidential records" as defined by Chapter 22 of the Code of Iowa, and agrees at all times to maintain the confidentiality of such data and information to the extent permitted by law.

(v) If, at any time or for any reason, any Foundation Confidential Information disclosed to the University cannot be legally kept confidential, then such information shall be promptly returned to the Foundation.

(vi) All Foundation Confidential Information that may be disclosed to the University or its employees shall be returned by the University to the Foundation upon the sooner of the completion of the University's use thereof or the Foundation's request, and upon such return any copies of such information that may have been made by the University shall be either returned or destroyed.

(vii) In addition to the preceding agreements and covenants, the disclosure of Foundation Confidential Information

by the Foundation to the University can be made subject to (a) such terms and conditions as the Foundation may reasonably impose in order to preserve the confidentiality of such information and to limit its use for purposes consistent with the mission of the Foundation and University, and (b) reasonable charges for the cost of producing, copying, transferring, or otherwise disclosing such information to the University or its employees.

(viii) To the extent that Foundation information is subject to state or federal records requirements, such as regulations regarding privacy of student records, it will comply with those requirements. The Foundation will also cooperate in making available records that the University has established as public information to the extent they are contained in the Foundation's database.

- c. The University and the Foundation shall adopt a privacy policy for all records maintained by the Foundation.

2.4 Management of Funds and Assets/Accounting. Foundation agrees to maintain the following standards in handling funds, and in conducting its business:

2.4.1 *Funds Donated to University*. The University may designate Foundation as its agent to hold and manage funds donated to and solely in the name of University. Foundation shall separately account for such funds, shall hold and manage such funds in accordance with the donor's intent and University

directions, and with the same care applicable to fiduciaries of charitable trust funds.

- a. With respect to property donated in the name of University, but held by Foundation as of the date of this Agreement, University specifically authorizes Foundation to hold and manage such property subject to subparagraphs (c) and (d), below. Foundation agrees to provide to University's President or the President's designee an inventory of such property by January 1, 2002.

- b. With respect to property donated in the name of University and not included in subparagraph (a) above, University may request Foundation as its agent to hold and manage such property. University shall disclose to Foundation:
 - i) Each and every term, condition or limitation imposed by the donor, or by legal determination (whether by a court or by the Iowa Attorney General) regarding the property;

 - ii) Each and every dispute or contention regarding the gift, and the status of the dispute; and

 - iii) Known risks related to non-cash gifts, including, but not limited to, environmental hazards associated with gifts of real property or equipment.

Foundation may accept or reject responsibility for the property.

c. Foundation shall keep adequate records tracking the management use and disposition of property donated in the name of University but held by Foundation. Such records shall include documentation of compliance with any term, condition or limitation upon the gift.

d. Property donated in the name of University but held by Foundation shall be returned by Foundation to University at University's sole discretion.

2.4.2 *Foundation as Trustee.* Funds granted to Foundation in trust for the benefit of the University, its students, affiliates or other related entities shall be handled in accordance with the intent of the donor and applicable law.

2.4.3 *Investment of Funds.* Unless otherwise agreed with University, or unless otherwise restricted by donor, funds shall be invested in accordance with the investment policy as determined by the Board of Directors of the Foundation. To the extent practicable, Foundation shall give the University's President or the President's designee thirty days' advance written notice of proposed changes in its investment policy. Where giving notice is not practicable, Foundation shall give as much notice as possible, and shall in any event immediately notify the University's President or the President's designee in writing of any change in Foundation's investment policy. Funds shall be invested in a timely manner which persons of prudence, discretion and intelligence exercise under the circumstance then prevailing consistent with Iowa law.

2.4.4 *Business Accounts and Records.* Foundation shall operate and maintain its accounting, development activities and record-keeping in a prudent and business-like manner.

2.4.5 Foundation shall comply with all IRS regulations and not engage in any practices that would result in intermediate sanctions being imposed upon the University.

2.4.6 The Foundation and University will follow procedures that provide for the timely transfer of funds or reimbursement of expenses incurred on behalf of either party.

2.5 Additional Business Standards. Foundation agrees to maintain the following additional standards in conducting its business:

2.5.1 *Insurance.* Foundation shall keep in force the following minimum insurance during the term of this Agreement:

- a. General comprehensive liability insurance, including bodily injury and property damage in the amount of \$5,000,000 per occurrence and \$5,000,000 aggregate.
- b. If Foundation owns or leases automobiles, it shall keep a liability insurance in effect covering such automobiles in the amounts of \$1,000,000 per occurrence.

- c. For any staffing, workers compensation insurance as required by law.

2.5.2 *Safe Environment.* Foundation shall operate with due regard to safety so as to afford students, staff, supporters and the general public a safe environment for activities intended to benefit them.

2.5.3 *Standards.* Foundation shall adhere to the following standards as a part of the University community:

- a. In order to assure confidence of the University community in its operations, Foundation's Board shall foster an atmosphere of openness in its operations, consistent with the prudent conduct of its business. The parties' understanding is that the Foundation is not a governmental body as defined in Iowa Code Chapters 21 and 22, and is therefore not subject to adherence to the Iowa Open Meetings and Public Records laws, or the remedial portions of those laws. Nothing in this Agreement shall be construed as a waiver of the Foundation's right to assert exemption from said laws.
- b. Foundation agrees to comply with federal, state, and local rules, regulations, and laws respecting equal employment opportunity. Foundation further agrees not to discriminate in any manner on the basis of sex, race, creed, age, affectional preference, color, national

origin, religious belief, disability, status as a disabled veteran, or veteran of the Vietnam era.

- c. By virtue of Foundation's independent status, its officers and employees may not be subject to provisions of law affecting public employees relating to conflicts of interest. Nonetheless, Foundation shall adopt policies consistent with assuring its officers and employees act in a manner consistent with donors' intent and trust and shall adopt maintain and enforce generally accepted policies to eliminate the appearance of or potential conflict of interest by officers, employees or Board members.

2.5.4 *Business Management.* Foundation shall follow prudent business practices in the management of its activities, including the management of real and personal property.

2.6 Applicability of Standards to Foundation Subsidiaries. Foundation shall assure its subsidiaries and owned or controlled affiliates comply with the standards established under Sections 2.4 and 2.5 of this Agreement.

3.0 Compensation.

3.1 For the above services, University shall annually pay an amount negotiated and agreed to by the parties. An annual funding and service addendum shall be attached to this Agreement as Exhibit A. This annual payment is intended to pay for the services provided under this Agreement by Foundation under Section 2.0 and more specifically

delineated in Exhibit A. Foundation shall not accept as compensation from University units any amounts in addition to the amount provided in Exhibit A, without the prior approval of the University's President or the President's designee. Nor shall Foundation enter into any agreement with University or any unit of University or allow transfer of University funds or property to it except pursuant to written agreement executed by the University's President or the President's designee.

3.2 As mutually agreed the University shall provide the following equipment, supplies and services to Foundation: (1) access to University's business services including, telephone systems, computation systems, printing, stores, and other professional support and services generally available to University departments; (2) access to University's Human Resources Services and benefit programs; (3) space for Foundation's Telemarketing operations and housing of college located development staff and (4) to the extent not in violation of law or regulations, other services as available to University units and departments. The Foundation agrees to reimburse the University for costs plus overhead following the University's established accounting policies for all services provided by the University as specified in Exhibit A. University services are provided for purchase by the Foundation and Foundation agrees to abide by University's regulation of such services.

3.3 With respect to Foundation's employees, University shall:

3.3.1 Provide Foundation employees with staff identification cards, as well as parking privileges, admittance to athletic events, access to University library, and access to staff recreation and fitness programs at the same costs that such benefits

and facilities are made available to University employees. Foundation employees will comply with all University policies when operating on campus.

3.3.2 Protect the security of such information with the same care exercised with respect to University's employees.

3.3.3 At the time of execution of this Agreement, individuals who work for the Foundation are employed by the University. The Foundation shall lease those employees from the University and reimburse the University for all costs associated with having those individuals on the University payroll. As mutually agreed on or before July 1, 2002, all individuals who work for the Foundation shall be employees of the Foundation and not employees of the University, except for those individuals who do not become employed by the Foundation. The Foundation, shall assume responsibility for all expenses associated with the transfer of employees, except expenses associated with employees who remain with the University.

3.4 Fund Guidelines/Transfer of Foundation's Funds. University agrees to use funds donated to Foundation in accordance with the donor's intent. University agrees to adopt and enforce a Gift Use Policy to assure proper use and expenditure of funds. University agrees to involve Foundation as consultant in adopting such policy. Where a specific purpose is specified, University agrees to use moneys received for the specific intended purposes. If Foundation is the designated recipient of funds made payable to University, the funds shall first be promptly transferred to Foundation.

3.5 Assistance of University Personnel. University shall make available key personnel, including but not limited to the President, Provost, Vice Presidents, Deans and Department Executive Officers to assist Foundation in its fund-raising and its other development efforts. Foundation shall not provide compensation to University officers or employees (not including those persons described in Paragraph 3.3) for such services without the express prior written approval of the University's President or the President's designee. Reimbursement or payment of out of pocket expenses of University officers or employees shall be for items and amounts reasonably related to the purposes of the fundraising and development project.

3.6 Use of University Name. Foundation may, in connection with its lawful business and activities, use the name of University as well as University's logo, seal, and other symbols and marks of University ("name and marks") consistent with the following restrictions:

3.6.1 Foundation shall not delegate the authority to use University name and marks to any person or entity without the written approval of the President of University or the Iowa State University Research Foundation (ISURF) following its established policies.

3.6.2 Foundation agrees to cease using University's name and marks in the event: (a) Foundation dissolves; (b) University withdraws recognition of Foundation as provided under Section 9, below; or (c) Foundation ceases to be a non-profit corporation or ceases to be recognized by the Internal Revenue Service as described in Section 501(c)(3) of the Internal Revenue Code.

3.6.3 Use of University's name and marks shall be consistent with the mission of the University and the purposes of this Agreement. Foundation shall not permit the University's name and marks to be used in connection with advertising of non-University or non-Foundation products or services unless such use is consistent with policies of University and its Research Foundation. Foundation agrees to abide by the policies and guidelines of University and the Iowa State University Research Foundation in the use of the name and marks of University. In addition to termination of use by reason of termination of this Agreement as provided in Section 9, Foundation understands that permission to use the name and marks of University is a privilege and that University or ISU Research Foundation may withdraw permission to use the University's names and marks (excepting the use of name in factual statements about the relationship of the Corporation and University) if it has been reasonably determined that Corporation has violated the provisions of this Paragraph or that withdrawal of permission is necessary to protect the goodwill in University's name and marks.

3.7 University will provide access to information and data files on new graduates, parents, students, employees, and retirees, degree and demographic information. Student demographic information, scholarship recipient and disbursement information and other information for the purposes of conducting fundraising efforts should also be available to the Foundation. Student information other than directory information is subject to federal privacy law (20 U.S.C. §1232g), and is made available on the condition that Foundation will adhere to the law and University policies. Employee and retiree information will be handled in accordance with generally recognized standards for personnel records, and

private information therein shall not be re-disseminated except as authorized by University or as required by law. Authorized University representatives will be provided access to such information in written or electronic form once it has been provided to the Foundation.

4.0 Mutual Obligations.

Foundation and University agree to cooperate and provide an environment of open communication so as to continue to work together to enhance the success of the mutual goals of Foundation and University. The parties will seek to bring into compliance with this Agreement and provide coordination among all University support organizations existing separately from Foundation. Foundation and University will meet annually to discuss performances of Foundation and plan future activities of University and Foundation.

5.0 Reports; Inspection of Records.

5.1 Written Reports to University. On or before September 1 of each year, the President of the Foundation will make a written report to the University setting forth the activities performed hereunder on behalf of the University during the preceding fiscal year. On or before February 1 each year, the President of the Foundation will make a preliminary written report to the University setting forth the activities contemplated to be performed hereunder on behalf of the University during the ensuing fiscal year. In addition, the President of the Foundation shall make such further reports to the University from time to time as may be agreed upon between the University and the Foundation. The content and form of all reports shall be mutually agreed upon. Within ninety (90) days of the close of Foundation's fiscal year, Foundation agrees to provide to the

President of University the Annual Independent Audit Report and will cooperate with the University in complying with generally accepted accounting principles in meeting consolidated financial reporting requirements.

5.2 Access to Records. Subject to the restriction of Section 2.3.6, the President of University or the President's designee shall have the right to inspect the records and books of Foundation.

5.3 Tax Filings. At the time IRS Form 990 is filed with the United States Internal Revenue Service, a copy shall be sent to University's President or the President's designee.

5.4 Right to Audit Accounts of Property Donated in Name of University. No more than once per year, University's auditors shall have the right to audit Foundation's accounts and records relating to property donated in the name of University, but held and managed by Foundation. Access to records shall be granted during Foundation's regular business upon reasonable advance notice.

5.5 Certification Regarding Expenditures. Annually, the Foundation Board shall certify that it has examined expenditures of funds from Foundation accounts to, or on behalf of University officers and employees and that such expenditures are reasonably related to authorized fundraising or development projects. The Certification shall be given to the University's President or the President's designee.

6.0 Effect of Agreement: Modification.

This Agreement (and its attachments, if any) contains all the terms between the parties and may be amended only in writing signed by an authorized representative of both parties.

7.0 Indemnification.

Foundation shall indemnify and hold harmless University, its governing board, officers, employees, agents, and students in their official and personal capacities, from and against any and all claim, damage, liability, injury, expense, demands, and judgments, including court costs and attorneys' fees, arising out of Foundation's performance of this Agreement, except for injury or damage caused by the sole negligence of University. This provision shall continue beyond termination or expiration of this Agreement.

8.0 Term.

The term of this amended Agreement ("Term") shall commence on July 1, 2001, and expire on June 30, 2004. If neither party gives notice ninety (90) days prior to the expiration of the agreement it will continue on a year to year basis. The FY (fiscal year) for the purposes of this Agreement is July 1 to June 30. If terminated all funds, data and information in the possession of the Foundation will be promptly returned to the University including any software necessary to access information.

9.0 Compliance with Applicable Law.

Foundation agrees to comply with all executive orders, federal, state, and local rules, regulations, and laws applicable to similar non-profit corporations.

10.0 Notice.

Any notice to either party hereunder must be in writing signed by the party giving it, and shall be deemed given when mailed postage prepaid by U.S. Postal Service first class, certified, or express mail, or other overnight mail service, or hand delivered, when addressed as follows:

To University:

President, Iowa State University
117 Beardshear Hall
Ames, IA 50011-2027

To Foundation:

Chair, Board of Directors
Iowa State University Foundation
2229 Lincoln Way
Ames, IA 50014-7164

or to such other addressee as may be hereafter designated by written notice. All such notices shall be effective only when received by the addressee.

IN WITNESS WHEREOF, University and the authorized representative(s) of Foundation have executed this Agreement on this _____ day of _____ 2001.

INSTITUTION:

FOUNDATION:

Iowa State University of Science and Technology

Iowa State University Foundation

By RC Seagrove

President

By Arnold Sandbult

Chairman, Board of Directors

Accepted and approved by the Board of Regents, State of Iowa.

Dated the ____ day of _____, 2001.

Owen J. Newlin, President

EXHIBIT A

FUNDING AND SERVICE ADDENDUM

Services to be provided for the University by the Foundation as stated in Section 2.

1. In conjunction with the University President and other senior University officers, develop, maintain, and, from time to time, modify an institution-wide development strategy in the form of an Annual (Multiple Year) Development Plan to be reviewed each year on or before April 1 to be applicable during the ensuing fiscal year(s).
2. Specific services to be addressed in and provided under the Annual (Multiple Year) Development Plan include the following:
 - a. Provide development services and other direct support in working with donors to Iowa State University Foundation, in cultivating major gifts and bequests, including interactions with donor family and business associates, interactions with co-beneficiaries and management of legal and business matters.
 - b. Service current Iowa State University donors and prospective donors who choose to give to Iowa State University or name Iowa State University as beneficiary of planned gifts, in a manner similar to that for those who contribute through or name the Foundation.
 - c. Assist the University President, Vice Presidents and Deans in the advancement of Iowa State University educational and research aspirations.
 - d. Provide development services and strategic planning advice for fundraising campaigns, special fundraising events and for the development of long term relationships with donors, prospective donors and other friends of the University.
 - e. Assist in outreach and communications programs with Iowa State University alumni and friends through collaborations with the Iowa State University departments that engage in outreach, particularly University Relations and the Alumni Association.
 - f. Assist the University directly or through other University affiliated organizations in the acquisition and financing of real estate or capital improvements such as the ISU Research Park, Memorial Union and ISU Agricultural Foundation.
 - g. Provide consultation and advice on gift and tax procedures appropriate to prospective donors' needs, including but not limited to charitable lead trusts, charitable remainder trusts, life estates, beneficiary designations and testamentary dispositions.

- h. Provide assistance in gift receipting for charitable gifts to Iowa State University in accord with the quid pro quo requirements and substantiation requirements imposed by the Internal Revenue Service.
- i. Provide support by the sharing of investment knowledge and advice through the cooperative input of the Foundation Investment Committee and the Foundation's investment planners and managers.
- j. Facilitate coordination and communication of University and Foundation activities by including the University Vice Presidents of External Affairs and Business and Finance in Foundation board and committee meetings with full access to information and discussion but without vote. The President of the Foundation will be included in University councils and committees where relevant fundraising or public relations activities occur.
- k. Provide access to any Foundation-financed facilities for meetings and functions of the University that further the University's advancement goals and objectives, as determined by the President of the University or designees, in accordance with use guidelines agreed to, from time to time, by the University and the Foundation.
- l. On a regular basis contribute to the updating of the name, address and telephone records of University alumni, students or staff.
- m. Assist the University in attracting and retaining key personnel including support of supplemental benefits and additional compensation programs as mutually agreed between the University and Foundation.
- n. Maintain a system for prospect management and tracking, including the development of information, mailing lists, surveys, and related tasks for the Foundation's internal uses.
- o. Advise on system support for management of University endowment funds and distribution of endowment earnings to recipients.
- p. Provide staff and other support services sufficient for the Foundation to continue conducting all of its ongoing campaigns and anticipated projects. In addition thereto, enhance Foundation staff and support services as may be necessary for the successful planning and conducting of a new University-wide major gifts campaign, as may be approved by the President of the University and the Foundation Board of Directors.
- q. Provide training to select members of the University administration, faculty and staff intended to improve the abilities of the University, as a whole, to enhance effectiveness at all levels of development and fundraising activity, and specifically including the University-wide comprehensive major gifts campaign.

3. Compensation

In consideration of the scope and value of the services the Foundation shall provide to the University as set out herein and in Exhibit A, the University shall pay to the Foundation \$750,000 payable in quarterly installments on the last day of each calendar quarter during each fiscal year. The payment is based upon the Foundation providing the current level of services.

Schedule A – Services Provided to Iowa State University by the ISU Foundation

Services provided to Iowa State University Foundation as defined in Section 2.3:

Service Provided		Cost to Foundation
Fundraising	Donor Identification, Cultivation and Solicitation	\$4,586,197
	Stewardship	875,766
	Maintenance of Database	948,197
	Development Communications	373,956
	Prospect Research	188,441
	Total	\$6,972,557
Management of Funds	Gift Receipting	208,724
	Account Management and Distribution	662,390
	Investment of Funds	412,969
	Total	\$1,284,083
Organizational Management	General Office	592,127
	Technology Infrastructure & Maintenance	617,654
	Employee Development	436,697
	Directors and Members	247,670
	Total	\$1,894,148
	Total Budget	\$10,150,788

Amount provided to the ISU Foundation by Iowa State University for these services:
 \$750,000

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SECRETARY OF
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THIRD
AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
IOWA STATE UNIVERSITY FOUNDATION

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TO THE SECRETARY OF STATE
OF THE STATE OF IOWA:

Pursuant to the provisions of Section 504A.39 of the Iowa Nonprofit Corporation Act, the undersigned corporation, Iowa State University Foundation; adopts the following Third Amended and Restated Articles of Incorporation:

ARTICLE I
NAME AND PLACE OF BUSINESS

The name of the corporation is IOWA STATE UNIVERSITY FOUNDATION and its principal place of business shall be in the City of Ames, Story County, Iowa.

ARTICLE II
OBJECTS AND PURPOSES

This corporation is organized for educational, scientific and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, as amended, and in this connection, the purposes for which the corporation is formed, and the business and objects to be carried on and promoted by it are as follows:

- (a) To promote the welfare of Iowa State University and of its faculty, graduates, students, and former students;
- (b) To identify, cultivate and solicit donors for the purpose of securing gifts and grants exclusively for the benefit of Iowa State University.
- (c) To accept, hold, administer, invest, and disperse for educational and scientific purposes gifts, grants, bequests, and devises, and to distribute interest from or principal of such funds, or both, less expenses, exclusively for the benefit of Iowa State University; and
- (d) To use all the assets and earnings exclusively for the purposes herein set out, including the payment of expenses incidental thereto; and no part of the net earnings shall inure to the benefit of any private shareholder or individual.
- (e) No part of the net earnings of the corporation shall inure to the benefit of any member, director, officer of the corporation or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation affecting one or more of its purposes). No member, director, officer of the corporation, or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation. No substantial part of the activities of

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the corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation, except as otherwise may be permitted in Section 501(h) of the Code. The corporation shall not participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office.

(f) Notwithstanding any other provisions of these Articles, the corporation shall not conduct or carry on activities not permitted to be conducted or carried on by an organization exempt under Section 501(c)(3) of the Code, or by any organization contributions to which are deductible under Section 170(c)(2) of the Code.

(g) The operation of this corporation shall be for exclusively charitable, literary, scientific and educational purposes in the public interest. It shall not be operated for the benefit of private interests, the creators, their family, shareholders, or persons controlled by the creators or their families.

(h) Upon the commencement of dissolution proceedings for this corporation, the Board of Directors may adopt, in the alternative, a plan of distribution of the assets of the corporation, transferring said assets to a qualified organization whose objects and purposes are to promote the welfare of Iowa State University, Ames, Iowa, or a plan of distribution transferring said assets to the State of Iowa for the exclusive use and benefit of Iowa State University, Ames, Iowa, for the purposes set forth in this Article, and if Iowa State University, Ames, Iowa is not in existence, to a qualified organization as defined herein. An organization is a "qualified organization", as contemplated in the preceding sentence, if, and only if, at the time of receiving such assets it is operated exclusively for the purposes described in Section 170(c)(2)(B) of the Internal Revenue Code, is or is treated as an organization described in Section 501(c)(3) of the Internal Revenue Code and agrees to apply and devote such assets for the aforesaid purposes of the corporation.

(i) As a means of accomplishing the foregoing purposes, the corporation shall have all the general powers set forth in Chapter 504A of the Code of Iowa, and as it hereafter may be amended.

These general powers shall be exercised exclusively for the attainment of the charitable, literary, scientific and educational purposes of the corporation, as set forth in this Article.

ARTICLE III POWERS

For the furtherance of the objects and purposes of this corporation, it shall have and exercise all powers granted to it by the Iowa Nonprofit Corporation Act, Chapter 504A, Code of Iowa, subject to the restriction that the aforesaid powers shall be exercised only for the purpose and to the extent that they fall within those allowed to an exempt organization as described in Section 501(c)(3) of the Internal Revenue Code; and, in addition thereto, the corporation shall have the following powers:

(a) Service as Trustee. To receive any property, real, personal, or mixed, in trust, under the terms of any will, deed of trust, or other trust instrument for the foregoing purposes or any of them (but for no other purposes), and in administering the same to carry out the directions and exercise the powers contained in the trust instrument under which the property is received, including the expenditure of the principal, as well as the income, for one or more of such purposes, if authorized or directed in the trust instrument under which it is received, subject to the restriction that the powers set forth in this subparagraph shall be exercised only for the purpose and to the extent that they fall within those allowed to an exempt organization as described in Section 501(c)(3) of the Internal Revenue Code; and

(b) Other Powers. In general, to exercise any, all and every power for which a nonprofit corporation, organized under the provisions of Iowa Code Chapter 504A or subsequent nonprofit corporation statutes can be authorized to exercise. Provided, however, any power authorized by these Articles which is not in furtherance of an exempt purpose as set forth in Section 501(c)(3) of the Internal Revenue Code shall not empower this corporation to carry on activities thereunder to more than an insubstantial extent, and further provided that the corporation shall not be empowered to carry on propaganda or to otherwise attempt to influence legislation or participate or intervene in any political campaign on behalf of any candidate for public office.

ARTICLE IV MEMBERS

The Members of this corporation as of the effective date of these Amended and Restated Articles of Incorporation shall be the voting members of the Corporation and shall be referred to as the Governors. Additional persons may become Members of this corporation in the manner provided by the Bylaws of this corporation.

ARTICLE V DURATION

The corporation shall have perpetual duration unless sooner dissolved.

ARTICLE VI BOARD OF DIRECTORS AND OFFICERS

Section 1. Board of Directors. The affairs and business of this corporation shall be conducted by a Board of Directors composed of up to nineteen (19) voting Directors.

Section 2. Officers. The Board shall appoint one person as President, who shall serve as chief executive officer and whose term of office shall be at the will of the Board of Directors. The President shall not be a member of the Board of Directors. The Board of Directors shall elect one (1) Director as Chair of the Board, and one (1) Director as Vice Chair of the Board. The Chair shall serve one (1) two (2) year term and may be eligible for an additional two (2) year term, but not in consecutive terms. The Vice Chair shall serve a one (1) year term and may serve only two (2) consecutive one (1) year terms. The Board shall appoint a Secretary and Treasurer. Said individuals filling such appointive positions need not be Directors. The Board may appoint

one (1) or more Assistant Secretaries and Assistant Treasurers. Said individuals filling such appointive positions need not be Directors.

Section 3. Election of Directors. The Directors shall be appointed or elected annually in the manner and for the terms as enumerated in Article VI, Sections 4 and 5 of these Articles of Incorporation.

Section 4. Classes of Directors. The Board of Directors shall be divided into the following four (4) classes, with such voting privileges as enumerated herein and in the Bylaws of the corporation:

(a) *First Class of Voting Directors.* The Directors of the First Class shall be three (3) in number, and at all times, one (1) shall be the President of Iowa State University and one (1) shall be the immediate Past Chair of the Iowa State University Alumni Association and one (1) shall be the immediate Past Chair of the Iowa State University Foundation.

(b) *Second Class of Voting Directors.* The Directors of the Second Class shall be two (2) in number and shall be appointed by the Iowa State University Alumni Association for a three (3) year term. The terms shall be staggered so that two Second Class directors are not appointed in the same year.

(c) *Third Class of Voting Directors.* The Directors of the Third Class shall be twelve (12) in number and shall be chosen from and by majority vote of those individual Members who are Voting Members of the corporation, as provided in the Bylaws. A Director of the Third Class of voting Directors must be a Member of the Iowa State University Foundation.

(d) *Fourth Class of Voting Directors.* The Directors may, but are not required to, appoint up to two Directors to serve for a term as specified by the Directors.

Section 5. Term of Office.

(a) *First Class of Voting Directors.* The terms for those Director positions held by the President of Iowa State University, the immediate Past Chair of the Iowa State University Alumni Association and the immediate Past Chair of the Iowa State University Foundation shall be continuing until a change in the respective office or position governing the appointment occurs.

(b) *Staggered Terms for Third Class Directors.* The terms of Third Class of Directors shall be staggered three (3) year terms as the Board shall determine.

(c) *Additional Terms.* Each Director in the Second and Fourth Class shall be eligible for re-appointment for one additional three (3) year term. Each Director in the Third Class shall be eligible for re-election for one additional three (3) year term. Nothing herein shall be construed to prevent the appointment or election of a Director to succeed themselves. However, no Director shall serve more than two (2) consecutive terms in office. If a Director is appointed to fill the remaining term as a result of a vacancy, and

the unexpired portion of the term is more than one (1) year, completion of the unexpired term shall constitute a full three (3) year term for purposes of determining the two-term limit. If the portion of the unexpired term is one (1) year or less, completion of the unexpired term shall not constitute a full three (3) year term and said director shall subsequently be eligible for election for two (2) three (3) year terms.

ARTICLE VII DUTIES OF OFFICERS

Section 1. President. The President shall be the chief executive officer of the corporation and shall exercise general supervision and direction of the conduct of its business and affairs. The President shall perform ordinary duties required of such position in similar organizations.

Section 2. Chair of the Board. The Chair of the Board shall preside at all meetings of the Members and the Board of Directors at which he/she may be present, and shall have such other powers and duties as he/she may be called upon to perform by the Board.

Section 3. Vice Chair. The Vice Chair shall, in the absence or inability of the Chair to act, perform the duties of the Chair, and such other duties as the Board of Directors may direct.

Section 4. Secretary. The Secretary or an Assistant Secretary shall take and preserve the minutes of all meetings of the Members and the Board of Directors, and perform such other duties as the Board of Directors may direct.

Section 5. Treasurer. The Treasurer or an Assistant Treasurer shall receive, preserve and account for the funds and securities owned or controlled by the corporation, shall pay out such funds, and dispose of such securities at such time and in such manner as the Board of Directors may authorize, and perform such other duties as the Board of Directors may authorize.

ARTICLE VIII MEETINGS OF THE MEMBERS AND DIRECTORS

The annual meeting of the Members of this corporation shall be held at such time and place as may be determined by the Chair, or in such person's absence or incapacity, by the Vice Chair, or in the absence or incapacity of the Chair and Vice Chair, by the Secretary.

Special meetings of the Members may be held at any time and place upon the call of the Chair, or of not less than four members of the Board of Directors, and the place and time of holding any such special meeting shall be designated in the call therefor.

Notice of all annual and special meetings of the Members shall be given by notice in writing, signed by the Secretary, designating the time and place of such meeting, and mailed to each Member at such Member's last known Post Office address not less than ten (10) days before the time fixed for any such meeting.

The Board of Directors shall hold an annual meeting each year immediately following the annual meeting of the Members, at the same place, and shall hold such special meetings as may be called by the Chair or two or more Directors. Notice of all annual and special meetings of the

Directors shall be given by notice in writing, signed by the Secretary, designating the time and place of such meeting, and mailed to each Director not less than ten (10) days before the time fixed for any such meeting; provided, however, notice of any regular or special meeting may be waived, in writing signed by all Directors, and provided further that actual presence of a Director at a special or regular meeting shall make the giving of notice to such Director unnecessary.

The Chair of the Board, Vice Chair, Secretary and Treasurer shall serve without compensation for services actually performed as officers. Officers and Directors may be allowed actual out-of-pocket expense necessarily incurred in the performance of their duties, if authorized by a disinterested majority of the Board of Directors.

At the annual meeting of the Board of Directors, the Board shall elect the Chair of the Board, the Vice Chair, Secretary and Treasurer. The President shall serve at the will of the Board, notwithstanding the terms and conditions of any employment contract entered into between the corporation and the President.

ARTICLE IX QUORUM

Section 1. Quorum of Members. A quorum of the Members shall consist of twenty-five percent (25%) of the voting Members or thirty (30) voting Members, whichever is greater.

Section 2. Quorum of Directors. A majority of the voting Directors of this corporation shall constitute a quorum at any annual, regular or special meeting of the Board of Directors.

ARTICLE X VOTING

Section 1. Member Voting Rights. Each Member of the corporation present shall be entitled to one vote on any question properly coming before any regular or special meeting of the Members of this corporation, except as otherwise provided in the Bylaws.

Section 2. Director Voting Rights. Each voting Director present shall be entitled to one vote on any question properly coming before any regular or special meeting of the Board of Directors of this corporation.

ARTICLE XI BYLAWS

The Board of Directors shall have power to prescribe and enforce Bylaws for the government of this corporation and its officers not inconsistent with these Articles.

ARTICLE XII NONLIABILITY AND INDEMNIFICATION

Section 1. Nonliability. A Director, officer, employee, Member or other volunteer of the corporation is not liable on the corporation's debts or obligations and a Director, officer, employee, Member or other volunteer is not personally liable in that capacity, for a claim based

upon an act or omission of the person performed in the discharge of the person's duties, except for a breach of the duty of loyalty to the corporation, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.

If this limitation of liability is too broad, then the above provisions shall be enforced to the fullest extent as provided by law.

If Iowa law is hereafter changed to permit further elimination or limitation of the liability of Directors, officers, employees, Members or other volunteers for monetary damages to the corporation, then the liability of such Director, officer, employee, Member or other volunteer of this corporation shall be eliminated or limited to the full extent then permitted. The Directors, officers, employees, Members or other volunteers of this corporation have agreed to serve in their respective capacities in reliance upon the provisions of this Article.

Section 2. Indemnification. This corporation shall indemnify Directors, officers, employees, Members or other volunteers of this corporation, and each Director, officer, employee, Member or other volunteer of this corporation who is serving or who has served, at the request of this corporation as a Director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust, other enterprise or employee benefit plan to the fullest extent possible against expenses, including attorneys' fees, judgments, penalties, fines, settlements and reasonable expenses, actually incurred by such director, officer, employee, Member or other volunteer relating to such person's conduct as a Director, officer, employee, Member or other volunteer of this corporation or as a Director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust, other enterprise or employee benefit plan, except that the mandatory indemnification required by this sentence shall not apply (i) to a breach of such Director's, officer's, employee's, Member's or other volunteer's duty of loyalty to the corporation, (ii) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, (iii) for a transaction from which such Director, officer, employee, Member or other volunteer derived an improper personal benefit or against judgments, penalties, fines and settlements arising from any proceeding by or in the right of the corporation, or against expenses in any such case where such Director, officer, employee, Member or other volunteer shall be adjudged liable to the corporation.

ARTICLE XIII AMENDMENTS

Except as otherwise indicated in this Article, following the approval by a majority of the voting Directors, the Third Amended and Restated Articles of Incorporation may be amended at any annual meeting of the Members or at any special meeting of the Members called for that purpose by a vote of the majority of the Members when a quorum, as defined in Article IX of these Articles of Incorporation, is present, subject to the restriction that any such amendment to these Articles shall be consistent with the requirements imposed upon exempt organizations as described in Section 501(c)(3) of the Internal Revenue Code. Notice of any meeting at which it is proposed to amend these Articles shall be given by notice in writing, signed by the Secretary, fixing the time and place of such meeting, and setting forth the prospective amendment in substance, and mailed to each Member at his last known Post Office address not less than ten

(10) days and not more than thirty (30) days prior to such meeting. No other notice therefor shall be required.

Article VI, IX and XIII of these Third Amended and Restated Articles of Incorporation shall not be amended, altered, changed, added to or repealed, without the prior affirmative vote of five-sixths (5/6) of the full Board of Directors at any regular or special meeting of said Board, and if notice of the proposed amendment, alteration, change, addition or repeal of matters provided for in Article VI, IX and XIII is included in the notice of meeting. Said proposal must be then submitted to the Members of the corporation at a duly called regular or special meeting for their approval as provided in paragraph one of this Article XIII.

The Third Amended and Restated Articles of Incorporation of the Iowa State University Foundation correctly set forth the Articles of Incorporation as amended and have been duly adopted as required by law.

Dated this 8th day of June, 2001.

IOWA STATE UNIVERSITY
FOUNDATION
(formerly known as
Iowa State University Achievement
Foundation)

By Thomas J. Mitchell
Thomas J. Mitchell, President

By Sharon L. Johnson
Sharon L. Johnson, Secretary

FILED
IOWA
SECRETARY OF STATE

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